147 US 177

# RECORD, CASE No. 13,640.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., ~~421~~. 92

SARAH G. MILES, PLAINTIFF IN ERROR,

*vs.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 19, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 12, 1892.

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1 UNITED STATES, }
*Eastern District of Pennsylvania,* } *sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process, and also in the rendering of judgment in the suit, before you, between Sarah G. Miles, plaintiff, and The Connecticut Mutual Life Insurance Company, defendant, in a plea of assumpsit, a manifest error has intervened, to the great damage of the said Sarah G. Miles, as in her complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 18th day of May, A. D. one thousand eight hundred and eighty-nine, and in the one hundred and 13th year of the Independence of the said United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
*Clerk of Circuit Court U. S.*

2 THE UNITED STATES OF AMERICA, *ss:*

To the Connecticut Mutual Life Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Sarah G. Miles — plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 14th day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

WM. BUTLER, *Judge.*

3 Service accepted.
Hartford, Conn., June 15, 1889.

{Seal Connecticut Mutual Life Insurance Co. of Hartford, A. D. 1846.}

JOHN M. TAYLOR,
*Vice-President The Connecticut Mutual Life Insurance Company.*

4 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 24. October Session, 1888.

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania,* } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1888, No. 24.

It is thus contained:

Be it remembered that on the fourth day of February, in the year of our Lord one thousand eight hundred and eighty-
5 nine, the defendant, by its attorneys, comes into court here and files an exemplification of the record and proceedings of the court of common pleas, No. 3, for the county of Philadelphia, State of Pennsylvania, in the words and figures following, viz:

6 *Exemplication.*

PHILADELPHIA COUNTY,
*State of Pennsylvania,* } *sct:*

Among the records and proceedings of the court of common pleas, No. 3, for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 168, December term, 1888, to wit:

*Docket Entries, December Term,* 1888.

SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } 168.

Rand. Johnson & Tustin, Nov. 27, '88.
Hanson, Dec. 3, '88.
Nov. 30, 1888.—Statement filed.
Dec. 15, 1888.—Affi't of defence filed.
Dec. 29, 1888.—Plea filed.
Sum's assumpsit; exit Nov. 19, 1888; ret. 1 Mon. Dec., 1888; service accepted.

Jan'y 12, '89.—Petition to remove cause to circuit court United States.

*Eo die*, prayer granted.

*Eo die*, bond filed.

7 SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } C. P., Dec. Term, 1888. No. —.

To proth'y, C. P.:

Issue writ of summons in assumpsit in above, returnable *sec. leg.*

THEO. D. RAND,
J. A. DEVLIN,
*Att'y- for Pl'ff.*

Nov. 19, 1888.

(Endorsed:) ≠ 168. C. P. 3, Dec. T., 1888. Sarah G. Miles *vs.* The Connecticut Mutual Life Ins. Co. Præcipe for sum's in assumpsit. Filed Nov. 19, 1888. W. MacCain, pro proth'y. Rand.

8 *Summons.*

COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of the county of Philadelphia, Greeting:

We command you that you summon The Connecticut Mutual Life Insurance Company, late of your county, so that it be and appear before our judges, at Philadelphia, at our court of common pleas, No. 3, of the county of Philadelphia, to be holden at Philadelphia, in and for said county, on the first Monday of December next, there to answer Sarah G. Miles of a plea of assumpsit; and have you then and there this writ.

Witness the Honorable Thomas K. Finletter, president judge of our said court, at Philadelphia, the nineteenth day of November, in the year of our Lord one thousand eight hundred and eighty-eight.

[SEAL.] W. MACCAIN,
*Pro Prothonotary.*

9 [Endorsed:] 168. Dec. term, 1888. Court of common pleas No. 3. Sarah G. Miles *vs.* The Conn. Mutual Life Insurance Co. Summons, assumpsit. Rand.

Service accepted Nov. 24th, 1888.

WALTER H. TILDEN, *Gen'l Ag't.*

10 SARAH G. MILES
*vs.*
THE MASS. BENEFIT ASSO. } C. P. 3, D. T., 1888. No. 168.

Enter our appearance in the above case for def't.

JOHNSON & TUSTIN,
132 *So. 6th St.*

To proth'y, C. P.

Endorsed: 168. D. T., 1888. C. P. No. 3. Miles *vs.* Mass. Benefit Asso. Order to enter appearance. Filed Nov. 27, 1888. R. F. Clay, pro proth'y. Johnson & Tustin, 132 So. 6th St.

11 C. P. 3, Dec. Term, 1888.

SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 168.

Sarah G. Miles, the plaintiff, brings this suit to recover from the defendant the sum of five thousand dollars, with interest, which is justly due from the defendant to the plaintiff upon the following causes of action:

John S. Miles, the husband of the plaintiff, insured his life in the defendant company, which issued to him its policy numbered 145,756 and in consideration of the representations and declarations made to the said company in the application for the insurance and the payment of the premium of $140.20, to be paid on or before the twentieth day of June of each year, insured the life of the said John S. Miles in the sum of $5,000 for the sole use and benefit of the plaintiff, which sum the said company agreed and promised in said policy to pay to the said plaintiff upon the death of her husband, the said John S. Miles. The said premiums were paid at the times required by the terms of the policy up to and including the 20th day of June, 1885.

On or about June 20th, 1886, the time when the next premium became due under the terms of the said policy, the said defendant wrongfully altered, abandoned, repudiated, and cancelled its policy and contract and refused all further performance thereof on its part to be made.

The said John S. Miles died upon the 10th day of January, 1888, of consumption and on or about January 24th, 1888, proof of his death and claim for the payment of the amount of the said insurance was made to the said company in accordance with the terms of the said policy and upon the forms provided by it for that purpose. The said defendant thereupon refused and still continues to refuse to pay the amount due to the plaintiff upon the said policy. Wherefore she brings suit for damages as aforesaid.

A copy of the said policy of insurance No. 145,756 is hereto attached and made part of this statement.

THEO. D. RAND &
J. A. DEVELIN,
*Att'y- for Pl'ff.*

12 STATE OF NEW YORK, } *ss:*
*City and County of New York,* }

Sarah G. Miles, being duly sworn, deposes and says that she is the plaintiff above named and that the facts set forth in the foregoing statement are true to the best of her knowledge and belief.

SARAH GERTRUDE MILES.

Sworn and subscribed to before me this 24th day of Nov., A. D. 1888.
NATH. N. JARVIS, JR.,
*Clerk Court of Common Pleas for the City and County of New York.*

No. 145,756. $5,000.

The Connecticut Mutual Life Insurance Company of Hartford, Conn.

Age, 37. Premium, 140.20.

In consideration of the representations and declarations made to them in the application for th-s insurance and of the annual premium of one hundred and forty dollars and twenty cents, to be paid to them on or before the twentieth day of June in every year, during the continuance of this policy, do hereby insure the life — John S. Miles (the insured), of Philadelphia county of Philadelphia and State of Pennsylvania for the term of his natural life, in the sum of five thousand dollars, for the sole use and benefit of Sarah G. Miles (the assured), wife of the said insured. The said sum insured to be paid at the office of this company, in Hartford, Conn., to the said assured or her legal representatives, within ninety days after due notice and satisfactory evidence of the death of the said in-
13 sured during the continuance of this policy; or if the assured be not then living, the said sum insured shall be payable as above, to her children, or to their guardian, if under age; any balance of the year's premium, when not all paid at the beginning of the year or any indebtedness to this company on account of this policy, being in either case first deducted therefrom.

This policy is issued and accepted upon the following express conditions and agreements:

1st. That the answers, statements, representations and declarations contained in or indorsed upon the application for this insurance—which application is hereby referred to and made a part of this contract—are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation or concealment, then this policy shall be absolutely null and void; and further, that no answer, statement, representation or declaration made to any agent, solicitor or any other person whatever, and not contained in said application shall be taken or considered as having been made to or brought to the notice or knowledge of this company; and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation or declaration; and the said application, a copy of which is hereto annexed, shall be taken and held to be and to contain the only answers, statements, representations or declarations made to this company in behalf of this insurance.

2nd. That this policy shall not take effect until the advance premium hereon shall have been actually paid, during the lifetime of the insured; and that if any subsequent premium on this policy be not paid when due, then this policy shall cease and determine, and this company shall not be liable for the payment of the sum

insured herein, nor of any part thereof; and that no premium on this policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company.

3rd. That the said insured is, under this policy, freely permitted to reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, in the United State- lying south of said thirty-second parallel (excepting from the first day of July to the first of November), and in
14 the eastern hemisphere lying north of the forty-second parallel of north latitude, and west of the fortieth meridian of longitude, east from Greenwich; and he may also pass as a passenger, by usual routes and means of public conveyance, to and from any port or place within the foregoing limits; but if he shall, at any time during the continuance of this policy, pass beyond or be without the foregoing limits; or shall be personally engaged in blasting, mining or submarine operations, or in the manufacture or transportation of highly inflammable or explosive substances, or as an employé in any capacity upon service on any sea, sound, inlet, river lake, or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntarily or otherwise (the militia, when not in actual service, alone excepted); without the consent of this company previously given in writing, in each or either of the foregoing cases; *of* if he shall die by suicide, or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delirium tremens, or if he shall be convicted of felony,—then, in each and every of the foregoing cases, this policy shall become and be null and void.

4th. That in every case in which this policy shall cease and determine, or shall be or become null and void, all premiums paid in respect of the same shall be forfeited to this company.

5th. That this policy shall not be assigned; but the same may be surrendered to this company and discharged at any time by the assured, if living, and after her death, by the beneficiary hereof under the statutes of Connecticut.

6th. That if, after the payment of two or more annual premiums upon this policy, the same shall cease and determine by default in the payment of any subsequent premium when due, then, this company will grant a paid-up policy, payable as above, for such amount as the then present value of this policy will purchase, as a single premium: Provided that this policy shall be transmitted to and received by this company, and application made for such paid-up policy, during the lifetime of the said insured, and within one year after default in the payment of premium hereon shall first be made.

15 7th. That the sum of — dollars, of the first annual premium hereon, is acknowledged as an indebtedness against this policy at six per cent. interest, payable annually until paid or cancelled by returns of surplus, and that said indebtedness shall be due and payable at the maturity or other settlement of this policy.

In witness whereof, the said Connecticut Mutual Life Insurance

Company have, by their president and secretary, signed and delivered this contract in the city of Hartford, this twentieth day of June A. D. one thousand eight hundred and seventy-seven.

E. B. WATKINSON,
*Vice-President.*

JACOB L. GREENE, *Secretary.*

Agents of the company have no authority to make, alter, or change any condition of the policy, nor to waive forfeitures thereof.

Ex'd: J.
Wife; ann. life.

Please notice: That upon the third page of this policy is a full copy of the application upon the faith of which it is issued, and which is a part of the contract of insurance. In case of any error or omission in any answer or statement therein made, the policy, with the proper correction of the application, must be at once returned, addressed to "The secretary of the Conn. Mutual Life Ins. Co., Hartford, Conn.," for the further consideration and action of the company.

16 Copy of application written by H.
Copy of application examined by H.

These blanks to be filled at the home office.

Approved:

No. ——; age, —— y'rs.
Am't, $——.
Ann. prem., $—— $\frac{}{100}$; H., $ —— $\frac{}{100}$.
Cr. prem., $——; ex., $—— $\frac{}{100}$.

L. term, —— years, table ——.
P. life, table ——.
P. end —— years, table ——.
Policy dated ——, 188–.
Policy written by ——; examined by ——.

Agents must not fill the above blanks.

*Application for Insurance in the Connecticut Mutual Life Insurance Co. of Hartford, Connecticut.*

Statement of particulars by the person whose life is proposed for insurance, which forms a part of the contract for insurance.

1. Name of the person whose life is proposed for insurance. Write the name in full. John S. Miles.
Occupation, to be stated specifically. Shoe manufacturer, 49 S. 4th St.
Residence. Place, 633 No. 13th St.; county, Philadelphia; State, Pa.

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2. A—How much insurance is desired? Ans. $5,000, five thousand dollars.
   B—Is the policy to be for the term of life? Ans. Yes.
   Or endowment insurance maturing at the end of — years (or on previous death)? Ans. —.
   Or are the premiums to be paid in full in — years? Ans. —, by table.
   C—Are the premiums to be payable during the whole term of the policy? Ans. Yes, by table A.
   D—Is the premium to be paid annually or semi-annually? Ans. Annually.
   E—Is the premium to be paid in full in cash or with part credit for the first year? Ans. All cash.
3. A—When and where were you born? Ans. In Philadelphia, on the 6th day of the month of October—State or county, Pa.—in the year 1840.
   B—What will be your age at next birthday? Ans. 37 years.
   Are you married? Ans. Yes.
   Or single? Ans. —.
4. A—Is there any insurance on your life? Ans. Yes.
   B—If, in this company, state the No. of policy and amount. Ans. No. —, for $—; No. —, for $—.
   C—If, in other companies, state the name of each company and amount insured in each. Ans. In the Mutual N. Y. Co. for $7,500; in the Ætna Co. for $5,000; in the Continental Co. for $2,500; in the — Co. for $—.
   D—Has any company ever declined to grant insurance on your life? Ans. No.
   If so, what company and how long since? Ans. —.
   E—Has any opinion ever been sought from or any consultation ever held with any officer of any life insurance company or any physician or surgeon as to whether your life was safely insurable? Ans. Yes.
   F—If so, was any decision or opinion given that you were or that you were not safely insurable? Ans. Safely insurable.
5. A—Have you ever resided out of the United States? Ans. No.
   B. Or south of the southerly line of Tennessee? B. Ans. No.
   C—If so, where and for what period? C. Ans. —.
   D—What disease did you have during this period? D. Ans. —.
6. A—Have you been successfully vaccinated? Ans. Yes.

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   B—What is the present state of your health? Ans. Good.
7. Have you ever had any of the following diseases? Answer (yes or no) opposite each:

Apoplexy? No. Dip-theris? No. Paralysis? No. Bronchitis? No. Insanity? No. Spitting of blood? No. Epilepsy? No. Habitual cough? No. Habitual headache? No. Asthma? No. Fits? No. Scarlet fever? No. Consumption? No. Dyspepsia? No. Pneumonia? No. Colic? No. Pleurisy? No. Rupture? No. Fistula? No. Syphilis? No. Piles? No. Rheumatism? No. Affection of liver? No. Gout? No. Affection of spleen? No. Neuralgia? No. Fever and ague? No. Dropsy? No. Disease of the heart? No. Scrofula? No. Palpatation? No. Smallpox? No. Aneurism? No. Yellow fever? No. Disease of the urinary organs? No. Cancer or any tumor? No.

If you have a rupture, state whether you habitually wear a truss.

State the number of attacks, character, and duration of all the diseases which you have had.

8. Have you had any other illness, local disease, or personal injury? And, if so, of what nature, how long since, and what effect on general health? No.

9. Is there now existing any disorder or any infirmity or weakness? No.

10. Are you, or have you ever been, addicted to the use of alcoholic beverages, opium, or other stimulants? No.

State your family history.

11. 1 grandparents living; ages, 88; health good.
1 grandparents dead; ages, 76; cause of death, old age.
72; don't know as to the other.
Father living; age, 60; health good.
Father dead; age, —; cause of death, —.
Mother living; age, 60; health good.

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Mother dead; age, —; cause of death, —.
2 brothers living; ages, 33, 28; health good.
0 brothers dead; ages, —; cause of death, —.
2 sisters living; ages, 35, 31; health good.
0 sisters dead; ages, —; cause of death, —.

12. A—Has any branch of your family been subject to insanity, or to any pulmonary, scrofulous, or other hereditary disease? A. No.
B—Have your ancestors generally reached old age? B—Yes.

13. Are you now, or have you ever been, in any military or naval service? If so, when, how long, and in what capacity?

14. How long since you were attended by a physician? For what diseases? Give name and residence of such physician. Not since childhood.
Name and residence of your usual medical attendant? Dr. Wm. Reed is my family Dr., 11th & Cherry St.; has known me 15 years.
Name and residence of an intimate friend? David B. Saylor, Philada.; has known me 12 years.

15. Is there any fact relating to your physical condition, personal or family history, which has not been stated in the answers to the foregoing questions and — which the officers of the company ought to be made acquainted? No.
16. Have you reviewed the answers to the above questions and are you sure that they are correct? Yes.
17. For whose benefit is this insurance to be effected? Write all names in full. Sarah G. Miles.
Relationship to the life insured. Wife.
In case of endowment insurance, state here to whom the sum is to be paid, if the person survives the term.

It is hereby declared and warranted that the above are fair and true answers to the foregoing questions, and that no statements respecting the physical condition, habits, personal or family history of the person whose life is proposed for insurance other than those above made have been made to any agent, solicitor, examiner, or other person in behalf of the company; and it is acknowledged and agreed by the undersigned that this application shall form a part of the contract of insurance, and that if there be in any of the answers herein made any untrue or evasive statements or any misrepresentations or concealment of facts, then any policy granted upon this application shall be null and void and all payments made thereon shall be forfeited to the company; and it is further declared by the undersigned that the party making this application has an "insurable interest" in the life above proposed for insurance to the full amount above applied for.

Dated at Philadelphia this 19th day of June, 1877.

Signature of the person or persons for whose benefit the insurance is to be effected:
SARAH G. MILES,
(Write all names in full.)
By JOHN S. MILES.

Signature of the person whose life is proposed for insurance:
(Write the names in full.)
JOHN S. MILES.

Witness to the signing hereof:
WALTER H. TILDEN.

Instructions as to signatures: A husband may sign for his wife: thus, "Mary Jones, by John Jones." When insurance is desired for the benefit of minor children it should be signed—*e. g.*, "John Jones, as guardian (or trustee) for Anna B., Lucy M., and Charles Jones, my children, or ("children of —— ——"). When the policy is taken in the person's own name one signature is sufficient.

Please notice.

The premiums of this policy will be due and payable at the office of the company, in Hartford, Conn., and not elsewhere, unless for

the time being, to an agent of the company, to whom the receipt for the renewal premium for any year may be sent for collection, but the receipt of premiums through an agent shall not be held to establish any binding precedent or custom as to the place of payment of premiums.

21 The assured is hereby notified that the only evidence to him of the authority of any agent to receive any premium on account of this policy is a receipt, in printed form, signed by the president or secretary of the company.

Notice of premiums falling due are sent as regularly as possible, but not as a matter of agreement, but for convenience only and without any responsibility for omission or miscarriage.

*Statute of Connecticut Respecting Policies of Insurance Issued for the Benefit of Married Women.*

Any policy of life insurance expressed to be for the benefit of a married woman or duly assigned to her or in trust for her shall inure to her separate use, or, in case of her decease before payment, to the use of her children or of her husband's children, as may be provided in said policy: Provided that if the annual premium on such policy shall exceed three hundred dollars the amount of such excess, with interest, shall inure to the benefit of such creditors of the person paying the premium; but if she shall die before the person insured, leaving no children of herself or husband, the policy shall become the property of the person who has paid the premiums, unless otherwise provided by said policy.

*Proofs of Death Required.*

Blanks for the several certificates required to be made in proof of death will be furnished upon request.

22 No. 145,756. Term of life. Annual premium.

Reduced. G. S. Gilman.

The Connecticut Mutual Life Insurance Company.

Sum insured, $5,000, on the life of John S. Miles.
Annual premium, $140.20.
Credit premium, ——.
Cash premium, $140.20.
Extra premium, ——.
Policy, ——.
Total cash payment, ——.

The annual premium on this policy is due and payable on the twentieth day of June.

Abst. 32.

| | |
|---|---|
| No. 145,756. | Age, 37; kind, L. |
| Amount, 85. | Credit, $——. |
| Red. amount, 4,300. | Am't red., 700. |
| Red. cr., ——. | Cr. red., $——. |

| | |
|---|---|
| Cash value applied | 82 39 |
| Accrued interest | |
| Total value | 82 39 |

When red., 6, 28, '86.
No. agency, 6. Check.

23 Endorsed: C. P. 3. No. 168. Dec. 3, 1888. Sarah G. Miles *vs.* The Connecticut Mutual Life Ins. Co. Pl'ff's statement. Filed Nov. 30, 1888. R. F. Clay, pro proth'y. Rand.

24 Com. Pleas No. 3, of Dec. T., 1888.

SARAH G. MILES
*vs.*
THE CONN. MUTUAL LIFE INSURANCE CO. } No. 168.

The proth'y will please enter my appearance for the defendant.
HANSON.

3 Dec., 1888.

To proth'y C. P.

Endorsed: 168. Dec. T., 1888. C. P. No. 3. Miles *vs.* Conn. Mutual Life Ins. Co. Order to enter appearance. Hanson, for def't. Filed Dec. 3, 1888. I. Kenderdine, pro proth'y.

25 Com. Pleas No. 3, Phila., of December Term, 1888.

SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 168.

*Affidavit of Defence.*

CITY OF HARTFORD, }
*State of Connecticut,* } *ss:*

John M. Taylor, having been duly sworn according to law, says:

I. I am the vice-president of the company defendant in the above-entitled suit, and am acquainted with the contract alleged by the plaintiff as the basis of her claim, and am familiar with the matters with respect to it which constitute the defendant's defence, and which is full, just, and complete to the entire demand made, and which, as hereinafter set forth, is on behalf of and for the defendant.

II. It is true that on the 20th June, 1877, the defendant, by its

policy of that date numbered 145,756, did insure the life of John S. Miles in the sum of $5,000 for the use and benefit of Sarah G. Miles, his wife, and I am informed that the paper-writing filed with the plaintiff's statement as the foundation of her demand is a copy of this policy.

III. In the summer of 1886 the said policy was, on behalf of Sarah G. Miles, the plaintiff, offered to be surrendered to the company defendant for reduction in amount and in consideration that another policy similar to it might be issued for the sum of $4,300, and so that the value of $700, the amount of the reduction requested and the difference between the amounts of the two policies, might be applied in payment of the premiums upon the reduced policy of $4,300. Accompanying the surrender was a release dated 20 June, 1886, alleged to the company defendant to have been signed by Sarah G. Miles, and which thereupon I believe to have been so signed and delivered to the company, whereby it was
26 released and discharged from all obligations under the policy first herein mentioned. The offer of surrender was accepted by the company defendant and a policy upon the life of John S. Miles for $4,300, dated 28 June, 1886, was executed as requested, delivered for Sarah G. Miles and made for her use and benefit and the premium paid thereon, and thereupon the contract which theretofore existed by virtue of the first-mentioned policy for $5,000 ceased to exist and was discharged and extinguished, and the defendant company, pursuant to the new policy and contract, applied the said sum of $700 in discharge and payment of the premium thereof for the year 1886; that from the said date of 28 June, 1886, hitherto no premium has been paid by Sarah G. Miles or by any one on her behalf upon the said policy for $5,000 and no offer made to pay the same or any of them until after the date of the alleged death of John S. Miles, in January last past.

IV. On the 20 June, 1887, the reduced policy issued for $4,300 as aforesaid was, on behalf of Sarah G. Miles, the plaintiff, offered to be surrendered to the company defendant in consideration of the sum of $583.24, to be applied in payment of the premium upon a paid-up policy on the life of John S. Miles for $1,195 for the use of Sarah G. Miles, the plaintiff, and accompanying the surrender was a release of the date of 20 June, 1887, alleged to have been signed by Sarah G. Miles, and which thereupon I believe to have been so signed and delivered to the company defendant, whereby it was discharged and released from all obligation under the policy of $4,300 aforesaid. The offer last above mentioned was accepted by the company defendant, the sum of $583.24 was allowed and applied and paid by it to or for the use of Sarah G. Miles, and it executed its paid-up policy, No. 181,242, dated the 9 July, 1887, and caused it to be delivered to the plaintiff, by which it insured the life of John S. Miles for the sum of $1,195, and thereby the policy for $4,300 became and was and remains extinguished and ended.

It is true that the defendant has refused to pay the demand of the plaintiff upon the policy first mentioned of $5,000, and for the reasons and upon the grounds hereinbefore set forth.

And on behalf of the defendant I aver that it is not indebted to the plaintiff upon the contract and policy alleged by her in
27 the said sum claimed, neither in any part thereof.

All of the statements herein made are, to the best of my knowledge, information, and belief, based upon which I believe them to be true, and I expect the defendant will be able so to manifest them upon the trial of the case by legal and sufficient evidence.

JOHN M. TAYLOR.

Sworn and subscribed before me, at said city of Hartford, this twelfth day of December, 1888.

HENRY E. TAINTOR,
*A Commissioner for Pennsylvania in the State of*
[SEAL.] *Connecticut, Residing at said City of Hartford.*

(Endorsed:) No. 168. Dec. T., 1888. C. P. No. 3. S. G. Miles *vs.* The Conn. Mutual Life Ins. Co. Affidavit of defence. Hanson, for def't. Filed Dec. 15, 1888. J. Briggs, pro proth'y.

28 C. P. 3, D. T., 1888.

SARAH G. MILES
*vs.*
THE CONN. MUTUAL LIFE INSURANCE CO. } No. 168.

Enter rule upon defendant to plead in 15 days, or judgment *sec. leg.*

THEO. D. RAND & J. A. DEVELIN,
*Att'y- for Pl'ff.*

Dec. 29, 1888.
To proth'y C. P.

Endorsed: 168. C. P. 3, D. T., 1888. Miles *vs.* Conn. Mutual Life Ins. Co. Rule to plead. Filed Dec. 29, 1888. J. Briggs, pro proth'y. Rand.

29 Com. Pleas No. 3, of Dec. Term, 1888.

MILES
*vs.*
THE CONN. MUTUAL LIFE INS. CO. } No. 168.

The def't pleads non-assumpsit.

HANSON, *For Def't.*

29 Dec., 1888.
To proth'y C. P.

Endorsed: 168. Dec. T., 1888. C. P. No. 3. Miles *vs.* Conn. Mutual Life Ins. Co. Plea. Hanson, for def't. Filed Dec. 29, 1888. J. Briggs, pro proth'y.

30 In the Court of Common Pleas No. 3 of Philadelphia, of December Term, 1888.

SARAH E. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 168.

To the honorable the judges of the said court:

The petition of The Connecticut Mutual Life Insurance Company, by John M. Taylor, its vice-president, respectfully represents—

I. That the above-entitled suit was begun in the court of common pleas No. 3 of Philadelphia, in the State of Pennsylvania, to recover the sum of $5,000, exclusive of costs, by Sarah E. Miles, who was and still is a citizen of the State of Pennsylvania, against The Connecticut Mutual Life Insurance Company, then and still a body corporate under and by virtue of a charter of the State of Connecticut and a citizen of the State last mentioned within the provisions of the act of Congress in such case made.

That in said suit an issue of fact has been reached, but no trial or hearing thereof or of the said suit has yet been had.

II. That the said suit has been brought by the plaintiff therein upon a policy of insurance for $5,000 upon the life of John S. Miles (who in his lifetime was the plaintiff's husband) issued by the defendant company, but which policy was surrendered to the defendant company, as is by it alleged, and by it cancelled in the lifetime of John S. Miles and before any right of action thereon accrued to the plaintiffs; from the premises I have reason to believe, and I do believe, that from prejudice or local influence the defendant, the petitioner herein, will not be able to obtain justice in the said State court of common pleas No. 3 of Philadelphia, and therefore
31 the petitioner desires the said suit to be removed for trial into the circuit court of the United States in and for the eastern district of Pennsylvania, which is that for the district where said suit is pending next to be held after the filing hereof.

III. That contemporaneously with the filing hereof the petitioner offers to the court good and sufficient surety for its entering into the said circuit court on the first day of its session next hereafter the process, pleadings, and proceedings in the suit herein and for the payment of all costs that may be awarded by said circuit court if it shall hold that this suit was wrongfully or improperly removed thereto, as is required by the provisions of the act of Congress aforesaid in this behalf.

Wherefore the petitioner prays the court to accept its bond, conditioned as therein set forth and with said surety, and to proceed no further in the cause aforesaid, except to make the order of removal required by law and to accept the said bond and surety and to cause the record to be removed to the said circuit court.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
By JOHN M. TAYLOR, *Its Vice-President.*

STATE OF CONNECTICUT, } ss:
*City of Hartford,* }

John M. Taylor, in the petition named, having been duly sworn according to law, says that the statements in the foregoing petition contained and which are within my knowledge are true, and that those not within my knowledge are made upon information of others, and these I verily believe to be true.

JOHN M. TAYLOR.

Sworn to and subscribed before me this 4th day of January, 1889.
NATHAN F. PECK,
*Notary Public.*

31½ Endorsed: No. 168. Dec. T., 1888. C. P. No. 3. S. E. Miles *vs.* Conn. Mut. Life Ins. Co. Petition for removal of suit to C. C. of U. S. Hanson, for petitioner. Now, 12 Jan., 1889, upon exhibition of the within petition, it is ordered that the suit be removed as prayed. By the court. MacCain, clerk.

Know all men by these presents that we, The Connecticut Mutual Life Insurance Company and Walter H. Tilden, are held and firmly bound unto Sarah G. Miles in $500, lawful money of the United States, to be paid to her executors, administrators, or assigns; to which payment, well and truly to be made, we do bind ourselves and our legal representatives, jointly and severally, by these presents. Sealed with our seals and dated the fourth day of January, 1889.

The condition of this obligation is such that if the above-named insurance company, which is a party defendant in any action now pending in the court of common pleas No. 3 of Philadelphia, in the State of Pennsylvania, at the suit of Sarah E. Miles, as of December term, 1888, No. 168, and which company has petitioned the said court for a removal of the said suit into the circuit court of the United States in and for the eastern district of Pennsylvania, shall enter in said court last aforesaid on the first day of its next sessions a copy of the record in said suit and shall well and truly pay all costs that may be awarded by the said circuit court if it shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
[SEAL.] By JOHN M. TAYLOR, *Vice-President.*
WALTER H. TILDEN. [L. S.]

Attest: WILLIAM Y. ABBOT, *Sec'y.*

32 Endorsed: No. 168. Dec. T., 1888. C. P. No. 3. S. E. Miles *vs.* Conn. Mutual Life Ins. Co. Removal of suits to C. C. of U. S. Bond. Filed Jan'y 12, 1889. MacCain.

33 COMMONWEALTH OF PENNSYLVANIA, } ss:
*Philadelphia County,* }

I, Wm. B. Mann, prothonotary of the court of common pleas No. three in and for said county, certify that the foregoing is a full and correct copy of the whole record of the case herein stated, wherein Sarah G. Miles is plaintiff and The Connecticut Mutual Life Insurance Company is defendant, as the same remains of record before the said court, at No. 168, of December term, A. D. 1888.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court the fourth day of February, A. D. 1889.

E. J. LINDSAY,
[SEAL.] *Pro Prothonotary.*

34 (Endorsed:) No. 24. October sess., 1888. C. C. U. S., E. D. of Pa. Miles *vs.* Connecticut Mutual Life Insurance Co. Exemplification of record from the court of common pleas No. 3 for the county of Philadelphia. Filed Feb. 4, 1889. Samuel Bell, clerk.

35 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 8th day of April, A. D. 1889, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit, Richard Dale, Joseph T. Ferree, John F. Stoer, Joseph M. Shoemaker, Jacob G. Frick, George W. Mehaffy, John A. Flannery, Annesley R. Govett, Henry S. Stiles, Howard S. Janney, Daniel Gehr, John Espenship, who are duly empanelled, returned, chosen, tried, and sworn or affirmed to speak the truth in the issue joined, &c.

And afterwards, to wit, on the 9th day of April, A. D. 1889, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendant.

36 And afterwards, to wit, on the 11th day of April, A. D. 1889, the plaintiff, by her attorneys, come into our said court here and moves the court for a new trial and file the following reasons therefor, to wit:

37 MILES }
*vs.*
INS. CO. }

And now, April 11th, I. A. Devlin and R. P. White, att'ys for plaintiff, move for a new trial and assign the following reasons, viz:

The learned judge erred—

1. In charging the court that "the premiums the payment of which was necessary to keep the policy alive were not paid, and nothing has been shown in the judgment of the court which excuses or tends to excuse the failure to pay them."

2. In charging the jury "that no conclusion that would justify the non-payment of the premiums would be permissible under the

evidence, even in the absence of their (defendant's witnesses') testimony."

3. In charging the jury that plaintiff could not recover and that their verdict must be for the defendant.

R. P. WHITE,
JAS. A. DEVLIN, *For Pl'ff.*

38 Endorsed: 24. Oct., '88. C. C. U. S. Miles *vs.* Ins. Co. Motion and reasons for a new trial. R. P. White, Jas. A. Devlin, for pl'ff.

39 And afterwards, to wit, on the 18th day of April, A. D. 1889, come the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on motion for a new trial and having been argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time to consider thereof.

And afterwards, to wit, on the 26th day of April, A. D. 1889, the court files the following opinion, to wit:

40 MILES, Adm'r, *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE CO. } Motion for New Trial.

SUTLER, *J.:*

The motion rests on an allegation of error in the charge—error respecting the law. To justify its allowance the error must be clear. If there is room for doubt the verdict must stand. Otherwise review, after a second trial, might result in finding that it was right and should have been allowed to stand.

The court charged that the policy was forfeited by non-payment of premiums. It is urged that this was wrong; that defendant's conduct waived or excused the payment.

The facts are that the plaintiff's agent called on the defendant when the time for payment was near expiration, protested his inability to pay, and requested permission to surrender the policy and take another paid-up instead. The defendant suggested a reduction of the policy to obtain means of payment as a better arrangement. This was manifestly an honest as well as a wise suggestion, and the agent adopted it. The defendant could not, however, allow it to be carried into effect without the plaintiff's written request. The agent, being informed of this, left, and returned subsequently with such a request, over her name, which he represented to be her signature. The defendant received the original policy and issued one for the smaller amount. When the premium matured on this he again called and protested his inability to pay and demanded another policy instead. A request for such a policy, purporting and represented to be signed by the plaintiff, was again produced. The defendant received the outstanding policy and issued another as requested. These written requests were forged.

Under these circumstances it is urged that the attempted surrender was binding on the defendant; that the transaction was voidable (by the wife), but not void, and consequently that no premium was due, or rather that its payment was wa-ved. This view, however, is manifestly unsound. The defendant's act having been procured by fraud was no more binding on it than her agent's dishonest act was on her. No subsequent assent of hers would have cured the defect without the defendant's assent.

It is further urged that the defendant's act seduced the agent from his duty or created an interest or motive hostile to its discharge; that if they had not allowed him to do what he did he
41 would have paid the premium or have informed her that he had not. We see no justification for this in the evidence. The suggestion that he would have paid or told his wife he had not is mere conjecture. What did the company do that an honest and careful man would not have done under similar circumstances? What did it omit to do that it should have done? It was not required to notify her of the situation. It believed, and was fully justified in believing, that she knew all about it. She can justly demand no more than that the transaction be treated as if it had not occurred, leaving her rights unaffected. If she is injured it is by the faithlessness of her agent and her own failure to supervise his acts, without any fault whatever of the defendant's. We do not find that either of the cases cited rule this. Whitehead *vs.* Ins. Co., 102 N. Y., 143, bears some general resemblance, but is readily distinguishable. If, however, it was identical we could not follow it. It would not, in our judgment, be a sound exposition of the law. Insurance companies should be held to faithful observance of their contracts and honest, upright dealing with the assured. Still, they have rights which the assured are bound to respect and the courts required to protect.

The motion must be dismissed. The facts to which our attention is called by affidavit are not "after-discovered;" and, besides, they would not justly be entitled to any weight in disposing of the question involved.

Endorsed: 24. Oct. sess., 1888. C. C. U. S., E. D. of Pa. Miles, adm'r, *vs.* The Connecticut Mutual Life Ins. Co. Opinion of court denying motion for new trial. Filed Apr. 26, 1888. Samuel Bell, clerk.

42 And afterwards, to wit, on the day and year last aforesaid, the court orders judgment to be entered on the verdict in favor of defendant and against the plaintiff.

Whereupon judgment is entered accordingly.

43 Be it remembered that in the term of ——, A. D. 18—, came Sarah G. Miles into the circuit court of the U. S. for the eastern district of Pennsylvania and impleaded the Connecticut Mutual Life Insurance Company in a certain plea of assumpsit, &c., in which the said plaintiff declared (*pro ut narr.*) and the said defendant

pleaded (*pro ut* pleas), and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court held at the district aforesaid, before the Honorable William Butler, president of the said court, on eighth day of April, A. D. 1889, the aforesaid issue between the said parties came to be tried by a jury of the said district for that purpose duly impannelled (*pro ut* list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury afore-
44 said impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue, and upon the trial the counsel of the said plaintiff, to maintain the issue upon his part, put in evidence the documents hereinafter specified and called witnesses, who, being duly sworn, testified as hereinafter set forth.

45 SARAH G. MILES
*vs.*
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } U. S. C. C. Butler, J.

MONDAY, *April 8th*, 1889.

Present: Messrs. Develin and White, for plaintiff; E. Hunn Hanson, Esq., for defendant.

Plaintiff's counsel offered in evidence original policy produced by call by the defendant, dated 20th of June, 1877, for $5,000, payable to Sarah G. Miles, the plaintiff, in the event of the death of the insured, to wit, John S. Miles, her husband. *Pro ut* same, Exhibit "A."

Plaintiff's counsel also offered in evidence policy produced on call by the defendant, dated 28th June, 1886, for the sum of $4,300, on the life of John S. Miles to the same beneficiary, Sarah G. Miles, his wife. *Pro ut* same.

Also policy on the life of John S. Miles, dated July 9th, 1887, for the sum of $1,195, to the same beneficiary, Sarah G. Miles, his wife, the last policy being found among the papers of the deceased. *Pro ut* same, Exhibit "B."

Plaintiff's counsel also offered in evidence receipts of the company for the premiums paid up to the issue of the second policy—that is to say, from the 20th of June, 1878, to the 20th of June, 1885. *Pro ut* same, Exhibit "C."

46 SARAH G. MILES, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. You are the plaintiff in this case?
A. Yes, sir.
Q. Your husband's name was what?
A. John S. Miles.
Q. When did he die?

A. January 16th, 1888.

Q. Were you aware of the insurance of his life in 1877 for this $5,000?

A. Yes, sir; I knew of it.

Q. What did you know about the payment of the premiums—who attended to that?

A. I supposed they were all right. He attened to it.

Q. When the policy was made did he tell you he would pay the premiums?

(Objected to.) (Objection sustained.)

Q. What occurred, upon his death, in relation to these policies? Go on and tell in your own way when you first heard of any change and all about it.

A. I supposed they were all right, and my father-in-law and myself went down to the office. That was after my husband's death. The clerk informed us that the policy had been reduced. That was without my knowledge.

Q. Tell all what he said. What did he say about it and what did you say?

47 A. He asked me if I signed it, and I said, "No; I did not."

Q. That is, signed for the reduction?

A. Signed for the reduction. I said I did not. He said that the husband had not the right to sign the wife's name. I asked whether my husband knew that. He said he did not know whether he did or not.

By the COURT:

Q. What did he say—the husband had a right?

A. Had not a right to sign the wife's name.

By Mr. WHITE:

Q. What more did he say—what did he say about it?

A. He said it was a case of forgery.

Q. Then you asked if your husband knew that he had not the right to sign it, and he said he did not know?

A. Yes, sir.

Q. Did anything more take place?

A. Not at that time.

Q. Up until that moment had you any knowledge whatever of any change or surrender of this policy?

A. I had not.

Q. You never gave any authority, either written or verbal?

A. No, sir; none whatever.

Q. And had no knowledge of it?

A. No, sir.

Q. Are those the proofs of the death which you issued?

(Handing papers to witness.)

48 A. Yes, sir.

Q. What did he say about what policy they would pay or why they would not pay this? What reason did he give?

Mr. HANSON: He said it was a forgery.

By Mr. WHITE:

Q. That is, the surrender was a forgery and not that the policy was a forgery?

A. Yes, sir; the surrender was a forgery. The signing of my name he said was a forgery. He had not the right to sign my name.

Q. You went there to get a $5,000 policy?

A. Yes, sir.

Q. I want to know why he said he would not pay the $5,000 policy.

A. I do not know why, unless it was that the policy had been reduced.

Q. Is that what he said?

A. Yes, sir; he said the policy had been reduced. He said they advised him to do it.

Q. That they had advised him to reduced the policy?

A. Yes, sir; advised him to reduce the policy.

Q. Did you tell them you had never given any authority?

A. I did.

Q. Of what did your husband die?

A. Consumption.

49 Q. What was his condition for a year or two before his death?

A. Any one could see for a year before my husband's death that he was in very poor health—very poor health.

Cross-examination.

By Mr. HANSON:

Q. In what year was it that your husband made the policy for $5,000 for your benefit?

A. In 1874, was it not? I do not remember exactly.

Q. I want you to tell me if you remember.

A. I do not know that I do.

Q. You do not remember?

A. No, sir; not exactly—1870 something.

Q. He, however, it was, was it not, that had the policy made out in your name, and it was he who paid all the premiums?

A. Yes, sir.

Q. And the policy during the time from which it was made out, whatever that year was, up to the time of its surrender, remained in his possession, did it not?

A. Yes, sir.

Q. You had nothing to do with it?

A. Nothing whatever.

Q. Look at this signature to this release and say whether that is your name.
A. Yes, sir; that is my name, but it is not my writing.
Q. Whose writing is it?
A. It is my husband's.
50 Q. Please look at that and say whether that is your signature and whether it is your name.
A. Yes, sir; that is my name, but it is not my writing.
Q. Whose writing is it?
A. My husband's writing.

Mr. HANSON: The first is a release dated 20th June, 1886; the second is dated the 20th June, 1887.

Q. Please tell me whether that is your name.
A. Yes, sir; Sarah G. Miles.
Q. Is that your writing?
A. No, sir.
Q. Who wrote that?
A. My husband must have written it.
Q. Do you know?
A. Yes, sir; I know he wrote it.

By the COURT:

Q. You are perfectly sure about that, are you?
A. Yes, sir; it is his writing.

Mr. HANSON: The signature I last showed her is the signature to the application for the original policy.

Q. I think you said that those were the proofs required by the company that you produced?
A. Yes, sir.
Q. How long had your husband been attended by a physician before his death?
51 A. About ten months.
Q. Who was the physician that attended him?
A. First it was William Read, our family physician.

By the COURT:

Q. Do you mean a physician had been attending him from about ten months before his death up to his death?
A. Yes, sir.

By Mr. HANSON:

Q. Who was the next physician?
A. Reeves.
Q. Who was the last physician that you had?
A. Van Horn.
Q. How long had he been attending him?
A. About three months.
Q. How long was he confined to the house before his death?

A. About seven months, off and on.
Q. Confined to the house?
A. Yes, sir.
Q. And during all that time was he attended by a physician?
A. All that time.
Q How long before your husband's death was it that he ceased attending to business?
A. If he felt well enough, a pleasant day, he would go down, but did not stay more than an hour or so. For about two months,
52 I think, it must have been, before his death, he gave up entirely and was not able to attend—yes, three months.
Q. Then, am I to understand that from two to three months immediately before his death he ceased attending to business?
A. Yes, sir; he did.
Q. And before that time he went down part of the day if it was a good day?
A. Yes, sir; for an hour or so. He did not attend to anything—just merely for a change; just to walk down and take the cars and ride back.
Q. That is, before these two or three months, if the day was a fair one, he would go out for an hour or t-o?
A. Yes, sir. He was up in the mountains about six weeks in June and July.
Q. Before those three months he would go down for an hour or two, if the weather permitted, and before that he had been in the mountains for some six weeks. That is correct, is it?
A. Yes, sir.
Q. This paid-up policy that was offered in evidence. How did that come into your possession?

(Paid-up policy handed witness.)

A. It was found among his effects after his death.
Q. When was it found among his effects?
A. His father can best answer that.
Q. Cannot you?
53 A. I appointed him administrator, and he had all the papers, and he went with me down to the office first and he had charge of these papers.
Q. How soon after Mr. Miles' death did you have any knowledge of that policy; how many weeks or days?
A. It must have been some time in February.
Q. He did about the 16th of January, 1888?
A. Yes, sir.
Q. You knew of that policy in February?
A. About February; yes, sir.
Q. In the early part of February, was it not?
A. Yes, sir; I think it was in the early part of February. I do not remember the date exactly.
Q. Did you call the attention of the company to that policy when you went down to make a demand for the $5,000 policy?
A. I could not say that. Whether father did or not I can't say.

Q. You were present, were you not?

A. Yes, sir; I know he showed him the proofs of the death, and whether he showed this paper I could not say.

Q. You do not remember whether he showed that paper?

A. No, sir.

Q. Was there any conversation about it? Do you not remember that?

54 A. No, sir; I do not.

Q. Do you remember that your father said there had been found a paid-up policy among the papers of Mr. Miles and that he had it?

A. No; I do not.

Q. You do not remember it?

A. No, sir.

Q. Will you say that that did not take place?

A. No; I will not, because I do not remember it.

Q. This last signature that I showed you, that was also not written by you, but you are confident it was written by your husband (showing signature to witness)?

A. Yes, sir.

Q. When you called on the insurance company it was at their office in this city, # 530 Walnut street, was it not?

A. Yes, sir.

Q. And saw Mr. Tilden, their agent, or was it to his clerk?

A. The first time I saw his clerk, the last time I saw Mr. Tilden himself.

Q. When you saw these two papers that I have handed to you and said that these were not your signatures, although those were your name, which one of these gentlemen said then, "This is a case of forgery"?

A. The clerk.

Q. When he said that what was it you said in reply?

55 A. I said, "Did my husband know?" I said, "My husband had a right to sign the wife's name—my name—in the New York Mutual." He says, "He has not in our company." Said I, "Did my husband know that?" He says, "I do not know whether he did or not."

Q. Then you had a policy in the New York Mutual, had you not?

A. Yes, sir.

Q. Upon which the premiums had been paid by your husband which was for your benefit?

A. Yes, sir.

Q. And in that company he had signed your name?

A. Yes, sir.

Q. Had he done that with you- assent?

A. Yes, sir.

Q. You knew of that?

A. Yes, sir.

Q. And that was the reason you said to this gentleman who sits there, "Well, did my husband know that he had not the right to sign in your company?" That is the reason you asked that, was it?

A. Yes, sir.

Q. Then you told him, did you, that he had signed your name in the New York Mutual Company?

A. Yes, sir; because I know he did it. He must have done it.

Q. You knew that he had done so and were willing that he should do so?

56 A. Yes, sir; quite willing.

Q. You were perfectly willing, were you not, that he should do so in this company?

A. Not if I had known he was going to reduce the policy and not pay the premium.

Q. You had never forbidden him to sign your name in this company?

A. No, sir.

Q. You were willing that he should do so in the New York Mutual, where he had done it?

A. The New York Mutual was all right.

Q. And but for the mere fact of his reducing his policy you would have been entirely willing that he should have done so in this company, too, would you not?

(Objected to.)

The COURT: The question is whether she had authorised him.

A. No.

By Mr. HANSON:

Q. What authority had you given to your husband to sign your name in the New York Mutual?

A. I had not given him any.

Q. But you knew that he had done it?

A. The same as he did in the Ætna.

Q. And he had done so, also, in the Ætna?

A. Yes, sir. The Ætna was all right and so was the New York Mutual all right.

57 Q. Were they paid-up policies in either of those companies?

A. No, sir.

Q. Or reduced policy in either of them?

A. No, sir.

Q. Had he told you that he had signed your name in those companies?

A. He did not tell me. He always did it. He never asked me to sign my name.

Q. What I ask you now is, Had he told you that he had signed those? He attended to your business in those two companies by signing your name?

A. He told me he attended to them, of course.

Q. Did you not give him authority to attend to your business in this company in the same way?

A. Yes, sir; I gave authority to attend to it in the same way, of course.

By the COURT:

Q. You say that he told you that he was going to sign your name in the other companies. Did you agree to that or assent to it?

A. He never told me—he never asked me.

Q. I understood you to say he did tell you that he was going to sign your name there in the Ætna and in the Mutual. You did not mean to say that?

A. No; I did not mean to say that. He did it without my knowing it. I never gave him authority to sign anything.

58 Q. Did he tell you afterwards that he had done so?

A. No, sir.

Q. How did you find it out?

A. He always attended to it.

By Mr. HANSON:

Q. How did you find out that your husband had signed your name to papers in the Ætna and Mutual Company, if he did not tell you?

A. I do not know; from just merely attending to it and paying the premiums up, I suppose.

Q. Have you not already said within five minutes that your husband did tell you that he had signed your name in those two companies?

A. He did sign it.

Q. Have you not already said he told you he signed it in those two companies? Do you not remember saying here, within five or ten minutes, that your husband told you that he had signed your name in the Mutual, and then you added, "Yes, in the Ætna too"?

A. I do not know that I said that. If I did I was mistaken, because he always did sign my name.

Q. When did your husband, before his death, first speak to you about the policy in the Mutual and Ætna Companies?

A. He did not talk to me at all about that.

59 Q. As the premiums accrued upon those two policies did he not tell you that they had been paid?

A. No; he did not.

At one o'clock the court took a recess until two o'clock.

2 P. M.

Mrs. MILES, having been recalled, was further cross-examined as follows:

By Mr. HANSON:

Q. Were all the premiums that were paid upon this $5,000 by Mr. Miles paid by him out of his own money?

A. Yes, sir.

Q. Do you know the amount of the premium upon this five-thousand-dollar policy that was payable every year?

A. $80 every year.
Q. Is that what you think it was?
A. That is what I supposed.
Q. How did you suppose that? Did you ever see the policy?
A. I saw it after his death; yea, sir.
Q. Where did you see it after his death—in the office of the company?
A. It was taken from his effects.
Q. I think you do not quite understand which policy I am referring to. I am speaking about the five-thousand-dollar policy—the one on which you brought suit. When did you first see it?
A. I saw that some time before his death, when he was
60 well. I saw that in health.
Q. How long before?
A. That I don't remember.
Q. Wasn't it when it was first executed?
A. Yes, sir; it must have been about that time. I couldn't tell you exactly.
Q. Do you remember what was the premium that was payable upon it each year?
A. I understood it was $80.
Q. You thought it was $80?
A. Yes, sir.
Q. When you saw it it was in Mr. Miles' possession, wasn't it?
A. Yes, sir.
Q. And he retained it in his possession all the time?
A. Yes, sir.
Q. Did he tell you when he made payments of premiums?
A. No, sir.
Q. Did he tell you how much the company allowed him from its accumulated surplus each year?
A. No, sir.
Q. He attended to that all himself?
A. Yes, sir.
Q. That is, he kept the policy and paid the premiums?
A. Yes, sir.
Q. And he received whatever was receivable from the company's surplus?
61 A. Yes, sir.
Q. That was all with your assent, wasn't it?
A. Yes, sir.
Q. Can you now remember (I think you could not before the adjournment) when it was that you first saw the paid-up policy for $1,194 that you have produced here in court?
A. No, sir.
Q. Did you take out letters of administration upon your husband's estate?
A. Yes, sir.
Q. How long after his death were they issued to you?
A. Right away I attended to it.
Q. Was it within a week or two weeks?

A. Yes, sir.

Q. As soon as they were issued as administratrix you looked among his effects, did you not?

A. Yes, sir.

Q. When you looked among his effects you found this policy, did you not?

A. Yes, sir.

Q. Does that enable you to tell nearly about how long after his death it was that you saw this paid-up policy?

A. No; I don't remember that.

Q. Do you remember that in 1886, when the five-thousand-dollar policy was surrendered and the reduced policy given to
62 you, Mr. Miles spoke to you about being in strait for money?

A. No; he didn't tell me.

Q. Did you know that he was?

A. I did, but he didn't tell me that he couldn't pay it.

Q. I ask you whether you didn't know that he was in strait for money.

A. I did; yes, sir.

Q. You did at that time?

A. Yes, sir.

Q. Did he not speak to you about his inability to pay the premium upon the five-thousand-dollar policy, owing to that fact?

A. No, sir.

Q. Are you quite sure about that?

A. Quite sure.

Q. Have you not spoken about that to others since his death?

A. Well, his straightened circumstances, I suppose maybe I did. I couldn't say positively, though.

Q. Have you not spoken about the fact that he was in such circumstances that he told you he feared that he was unable to pay the premium upon the policy that was due to keep it alive, as he expressed it? Have you not spoken to others since your husband's death that he mentioned to you that he was in straightened circumstances for money in 1886, and that he feared he couldn't keep this five-thousand policy alive?

63 A. He never said so.

Q. These two releases which have your name to them are not at all in your husband's usual handwriting, are they?

A. They look like his handwriting.

Q. Don't you recognize in looking at them that they are an imitation of your handwriting, and that whoever wrote them has tried to copy your handwriting?

A. No, sir.

Q. Don't you think that is the case?

A. No, sir.

Q. Be kind enough to write your name for me.

(Witness does as requested.)

Are you in the habit of writing it in that way?

A. Yes, sir.

Q. You are in the habit of writing it "Sarah Gertrude Miles" and not "Sarah G. Miles"?

A. I have signed it both ways, and I only sign it to a legal paper that way.

Q. Do you happen to have in court any of the signatures of your husband among any of the papers here, in the hands of your counsel?

A. I suppose we have. I don't know.

(Original application of policy shown witness.)

Q. Is that your husband's signature?

A. Yes, sir.

Q. Have you ever made any offer to the company to de-
64 liver up this paid-up policy?

A. No; I haven't made any—yes; I tendered them the amount, if that is what you mean.

Q. No; I mean have you ever offered to the company to surrender this what is called paid-up policy for $1,195, which you found among your husband's papers?

A. No, sir. I don't understand what you mean.

Q. You know what surrendering a paper means, don't you?

A. Yes, sir.

Q. It means surrendering it up—quitting all possession of it. Have you ever offered to do that with regard to this paper to the company?

A. No, sir.

Q. I think you said in your examination-in-chief that the clerk of the company at the office in Walnut street told you, when you made the first or second visit there, that they had advised Mr. Miles to surrender the five-thousand-dollar policy and take out a reduced policy for $4,300? Did I understand you to say that?

A. Yes, sir.

Q. Did he not explain to you why they advised that—that Mr. Miles had said to them he was unable to pay the premium upon the five-thousand-dollar policy, and that they then said to him, "Well,
you had better, then, reduce it just enough to enable the re-
65 duction to pay the premium and take out a reduced policy"? Did he not explain that to you?

A. Well, I wouldn't be positive about that.

Q. Do you recollect that the clerk also said to you that when the premium fell due upon the reduced policy Mr. Miles came and said that he was unable to pay it, and they then said to him, "The best thing you can do is to take out a paid-up policy," and that he then took out the paid-up policy which is here? Did he not say that to you?

A. I don't remember his saying it.

Q. I mean this gentleman.

A. I know the gentleman.

Q. Don't you recollect that?

A. I don't remember his saying it; no, sir. I didn't see that gentleman but once.

Q. That was your first visit?
A. Yes, sir.
Q. Perhaps it was Mr. Tilden at the second visit. Did he tell you?
A. No, sir; I don't remember.
Q. Who called with you the first time?
A. Father—Mr. Miles, who is sitting behind Mr. White.
Q. Did he call the second time?
A. No, sir; not with me.
Q. The second time you called alone?
A. With Mr. Leafman.
66 Q. In that second visit you saw Mr. Tilden, did you not?
A. Yes, sir.
Q. At which one of these visits was it that you tendered the two unpaid premiums to the company?
A. The last visit.
Q. What was the amount that you tendered?
A. $165.
Q. When was that?
A. The 22d day of March.
Q. Your husband died on the 16th of January, 1888, and you made this tender on the 22d of March, 1888?
A. Yes, sir.
Q. How soon was the 22d of March after you had been told by the clerk of the company what had been done by your husband?
A. I don't remember the date when I first called at the office—in February.
Q. You have said that you called in February, 1888; your husband died in January, the middle of the month; you called in February the second time. When you called the second time you made the tender. How long was it after the first visit?
A. I couldn't tell you the exact time. It couldn't have been more than a few weeks.
Q. But you learned at the first visit what your husband had done?
67 A. Yes, sir.
Q. It was about two or three weeks after that that you made this tender?
A. Yes, sir.
Q. The amount you tendered was how much?
A. $165.
Q. In whose company did you make that tender—Mr. Leafman's; did you take him as a witness?
A. Yes, sir; Mr. Leafman; in his presence.
Q. You did that by somebody's advice?
A. Through my counsel.
Q. Wasn't it through the advice of Mr. Miles?
A. No, sir.
Q. How did you arrive at the sum of $165 as being the amount of the two premiums?
A. Mr. Rand told me to do that. He was my counsel.

Redirect examination.

By Mr. WHITE:

Q. You have spoken of a policy in the Ætna and a policy in the Mutual. Were they exchanged or reduced?

Mr. HANSON: She has already said no. I asked her that question.
The WITNESS: I misunderstood you.

Mr. WHITE:

Q. You say they were neither exchanged nor reduced?
68 A. No, sir.
Q. Did you know of any policy having been reduced until this interview at the office after your husband's death?
A. No, sir.
Q. Was there ever any talk between you and your husband about surrendering any policy or reducing any policy.

(Objected to as already answered.)

A. No.
Q. There never was any talk of anything of the sort?
A. No, sir.
Q. What did you mean when you were asked by Mr. Hanson about your husband signing your name—did he ever sign your name or have any authority to sign your name at any of these companies?

(Objected to.)

A. I don't understand exactly what you mean?
Q. What did your husband ever do about these policies, with your knowledge?
A. He never consulted me.
Q. What I want to know is, so far as you know, with the exception of this policy, was there ever any change or anything done about the policies except taking them out and paying the premiums on them—that is, with the exception of the policy you are suing upon, was there ever anything done with any of the policies
69 except to take them out in the first place for your benefit and then to pay the premiums on them afterwards?
A. No, sir.
Q. Did your husband ever tell you anything about them except that he had taken them out and that he would pay the premiums upon them?
A. No, sir.

THOMAS MILES, having been duly sworn, was examined as follows:

By Mr. WHITE:

Q. You are the father of the last witness?
A. I am the father of her husband.

Q. Did you accompany her on the first visit to the insurance office?

A. Yes, sir.

Q. State, as nearly as you can, what took place there.

A. We inquired first for Mr. Tilden; the agent stated that Mr. Tilden wasn't in; that he was out of town, and that he could give us all the information we wanted in regard to that matter. We told him what *was* came down for. He then stated that my son had stated to him that he was short of funds at that time, and at first they reduced his policy to four thousand two hundred dollars
70 and odd; that the premium was taken off, and this paid-up policy was substituted afterwards. This paid-up policy was the second reduction.

Q. Did he say who advised that reduction or how it happened to be made?

A. No; I don't think he did. I don't recollect of any such circumstance, only that he complained that he was going out of town and didn't have the money at present on hand. My son, I know, never made it known outside.

(Objected to.)

Q. You knew dothing about it until you went there?

A. No, sir; I didn't know a thing about it.

Q. He told you that the policy had been reduced first, and then this paid-up policy given?

A. Yes, sir. That we learned in the office. He died without a will or without a scratch of the pen in any way, shape, or form. After his death we knew that his papers were in the life & trust company, and Mr. Rand and I went and saw Mr. Smith and asked permission to see what papers were in the box. We had the keys of the box and we went there and examined and found no papers there--nothing in the form of a will or anything of the kind, except these policies. They were not taken out because we had no right to them. Afterwards I advised my daughter-in-law to take out let-
ters of administration, which of course required some little
71 time before we got those papers in our possession. Soon after that we called at the office of the Connecticut Mutual and saw the clerk of the office. Mr. Tilden was away somewhere in the back part of the State, I understood him to say, and wouldn't be there for several days.

Q. What did you do as soon as Mr. Tilden came back?

A. As soon as he came back we then reported to Mr. Rand, and Mr. Rand advised us.

Q. What did you do?

A. My daughter-in-law and Mr. Leafman went down and tendered the money—the premiums.

Q. The only delay about that was until Mr. Tilden came back?

A. Until Mr. Tilden came back.

Q. You haven't stated anything about what was said about the signature when they told you that this policy had been changed, that you wanted them to pay. What have you to say as to that?

A. They showed us the signature. My daughter-in-law at once stated that it was not her signature. When I looked at it I was very well satisfied that it was not, and I would be very sorry to say that it was my son's signature.

Cross-examination.

By Mr. HANSON:

Q. At the time of the death of your son he was a man in middle life, was he not—about 48 years of age?

72 A. No; he was not so old as that. He was 45 or 46 years of age.

Q. He was a merchant in Philadelphia, was he not?

A. Yes, sir.

Mr. HANSON: I propose to ask this witness whether or not his son was not a man in public business in Philadelphia, of middle life, of an upright character, and whether or not, in view of this and his acquaint-ship with the son, he believes that he committed the act of forgery attributed to him in this case by the plaintiff.

(Objected to. Objection sustained.)

(Exception by defendant.)

(Counsel for defendant proposes to hand to the witness two receipts, being formal releases, and ask him to look at the signature, and to say whether, being acquainted with his son's signature, he believes those to have been written by his son.)

Mr. WHITE: I have no objection to that.

Mr. HANSON (to the witness): Please look at those two signatures and state whether or not you believe those signatures to have been written by your son.

A. Neither of them resemble his hand-riting at all. I could swear positively that he did not write them.

Q. I ask you to look at those signatures, and from your acquaintanceship with your son's handwriting to say whether

73 or not, in your opinion and in your belief, those were written by him.

A. I doubt it very much, but at the time these signatures were made my son was in a very low state of health, and his signatures would very and did vary considerably.

Q. Is there any question at all about your doubting that those signatures are his signatures, notwithstanding that fact? Don't you doubt that they are his signatures or written by him?

A. No; they haven't the appearance of his signature in the least. Now, I can't say who wrote them or anything further. You ask me if I say they resemble his handwriting. I say distinctly that they do not.

Q. On the contrary, I do not ask you that at all. I simply ask you for your opinion; whether, in your opinion and in your belief, those are your son's handwriting.

Mr. WHITE: That is, judging from the handwriting.

The WITNESS: Well, I really cannot answer that question otherwise.

By Mr. HANSON:

Q. Don't you believe they are not?

A. Well, I won't say that, either. I couldn't swear positively. It is not like — signature. Now, I can't go further than that.

Q. I only ask you for your opinion.

The COURT: That is, judging from the writing itself—from
74 the appearance of the writing, would you say it was or not?

A. Well, I can't do that. I can say that those signatures don't resemble his handwriting—that is, while he was in a fair state of health.

By the COURT:

Q. Did they resemble his handwriting at that time?

A. No, sir; not at all.

By Mr. HANSON:

Q. (Handing to witness original application and referring to signature in lower right-hand corner.) Is that your son's handwriting?

A. Yes, sir.

Q. (Indicating.) Do you know whose handwriting that is?

A. No, sir.

Q. (Handing to witness original application for policy and showing name of Sarah G. Miles.) That is not your son's?

A. That is not my son's handwriting.

Q. The last signature shown to you or rather the name is not a signature, is it?

A. No, sir.

Q. That is the filling up of the application that you refer to when you say that it is not in your son's handwriting?

A. Yes, sir.

Q. Did you have the paid-up policy with you when you went to the office?

A. Yes, sir; that is all the policy that was in the box.
75 We went down there for the purpose of an explanation.

Q. And the explanation you received is what you have stated.

A. Yes, sir.

(Papers identified understood to be in evidence.)

Plaintiff rests.

*Defendant's Testimony.*

WILLIAM B. TABOR, having been duly sworn, was examined as follows:

By Mr. HANSON:

Q. You are a clerk in the employment of the Connecticut Mutual Company, at its office, 530 Walnut street, in this city?

A. Yes, sir.

Q. Look at the paper-writing dated 20th June, 1886, and state what you know about it and how it came in your possession and under what circumstances.

A. This is the receipt for the reduction. The only facts I remember in regard to it are that at about this date Mr. Miles called at the office, his premium being due, and stated his inability to pay it, and stated that he wished to take a paid-up insurance for his original $5,000 policy. He was advised not to do so, as it would at once cut his insurance from $5,000 down to about $1,000 or $1,100
76 possibly, and that a better plan probably would be to surrender a portion of the policy, the company allowing a value for the portion surrendered and to pay the premium on the balance. Calculation was made by me, and I found that surrendering $700 of the policy the company would allow for that $700 about $82; that the premium on the remaining $4,300 was about $84; that it would only therefore require about $2 in money in addition to the surrender of the insurance to pay the premium. It was also explained to him, I think, what the paid-up value was. He decided upon taking a reduction instead of the paid-up. The receipt was drawn up. This is in my handwriting. He was requested to have his wife's signature attached to it. He asked where, and I showed him where, and he took his lead pencil and wrote here Sarah G.

Q. In lead pencil?

A. In lead pencil—on the receipt. It is here now, I see. He took the receipt with him for the purpose of getting his wife's signature to it. It was returned to me with what I supposed to be her signature; forwarded to our home office, together with the original $5,000 policy.

Q. (Paper handed witness.) Is that the original $5,000 policy?

A. I think it is; yes, sir.

Q. After forwarding it to the home office, is that the policy that was issued (referring to another policy)?

A. Yes, sir.

Q. That is the reduced policy of $4,300?

77 A. Yes, sir.

Q. Be kind enough to look at the receipt dated 20th June, 1887, and state also the facts that you know about that.

A. One year later Mr. Miles went through the same proceeding. He came to the office and stated his inability to pay the premium on the reduced policy and again stated that he wished a paid-up policy. He was advised most strongly not to do so, but to still further reduce to keep as much insurance as was possible; that when the policy was paid up it could never be put back again where it was. He insisted, however, upon taking a paid-up, and this was done.

Q. (Policy shown witness.) Is — the policy that was issued?

A. It is.

Q. What was that paper given to him for by you—is it in your handwriting?

A. That paper, the body of it, is in my handwriting.

Q. That was given by you to him for what purpose?

A. To obtain his wife's signature. He took it away with him and returned it as it is now.

Q. Do you remember Mrs. Miles calling upon you in company with Mr. Miles, who has just been a witness in this case?

A. I do.

Q. Please state exactly what took place.

A. I remember her calling and notifying us of her husband's death. Mr. Tilden was not in and I waited upon her. I
78 don't remember whether she produced the paid-up policy or not, but she seemed to me rather surprised when I told her her husband was not insured for $5,000, and had not been for a year or longer; that her husband had surrendered the policy and that we had her release for the policy.

Q. Did you produce these papers to her?

A. No, sir; not at that time I did not. I did later. She declared that we did not have her releases of the policy and asked to see them. I told her I could not allow her to do so, as they were in Hartford, in the possession of the home company. She requested me to write and obtain the original receipts, which I did. I obtained them and she called the second time and saw them. I showed them to her. She stated at the time that they were not her signatures. I told her I knew nothing about it.

Q. (Indicating.) Are these the ones that you showed to her?

A. Yes, sir. I told her I knew nothing whatever about it, but that is they were not her signatures her husband had forged or had procured them.

Q. Were you present at the visit which Mrs. Miles and her father-in-law made the second time?

A. I think they both came the second time I have just referred to. They saw me first where they said Mrs. Miles had never
79 signed such a receipt, and the second calling, possibly a week later, in order to see the original papers which I had sent to Hartford to procure. I think her father-in-law was with her the second time.

Q. Were those two the only interviews that you were present at?

A. Yes, sir; I am sure Mrs. Miles was accompanied by somebody the second time.

Cross-examination.

By Mr. WHITE:

Q. You have stated that you did take a surrender of the first policy and issued the second?

A. The $5,000 policy was surrendered; yes, sir. A policy was given up, together with the release.

Q. You issued the second one to Mr. Miles, and subsequently the second was surrendered and the third was given?

A. Yes, sir.

Q. And the only person you had any interview with about it was Mr. Miles?

A. Yes, sir.

By the COURT:

Q. The only person that you saw or had any intercourse with?
A. Yes, sir; the insured.

80 WALTER H. TILDEN, having been duly sworn, was examined as follows:

By Mr. HANSON:

Q. You are the principal agent of the defendant company in this city, with your office at 530 Walnut street, are you not?
A. Yes, sir.
Q. Do you remember having any interview with Mr. J. S. Miles in his lifetime with respect to his policy and its reduction?
A. I have no recollection of it at all.
Q. Did you have any interview with Mrs. Miles or with her father-in-law, Mr. Miles, after her husband's death?
A. I don't remember seeing her father-in-law. I think I saw Mrs. Miles on one occasion, but I cannot recall it.
Q. You saw her on one occasion?
A. I think so.
Q. Please state what took place between Mrs. Miles and yourself on that occasion.
A. I don't remember what it was. It was in reference to this policy—in reference to the insurance.
Q. You don't remember particularly what it was?
A. I don't remember particularly.
Q. It was after the death of her husband?
A. Yes, sir; after the death of her husband.

Cross-examination.

81 By Mr. WHITE:

Q. (Letter shown witness.) Do you recognize that letter?
A. Yes, sir; I recollect that letter. I think I recollect transmitting it to Mr. Rand.
Q. It was an answer of your company to the demand?
A. Yes, sir; the company returned the demand for the payment of $5,000, and would not acknowledge any claim under the policy.

Defendant closes.

Mr. White offers said letter in evidence.

Mr. Hanson offers in evidence the two releases brought—Exhibit No. 1, Exhibit 2—to the company by Mr. Miles when he procured a reduction of the first policy and when he took the paid-up policy.

(Objected to. Admitted.)

Mr. HANSON: I also offer in evidence the $5,000 policy, the $4,300 policy, the $1,195 policy, the application for the $5,000 policy, Exhibit D; the two re-eases, Exhibits E & F, with the name of Sarah G. Miles, and the paper-writing upon which Mrs. Miles has signed her name, Exhibit G.

Testimony closed.

82 TUESDAY, *April 9th*, 1889.

*Charge of the Court.*

This suit is on the policy of insurance for $5,000 which is before you. The defence is twofold:

First. That the policy was annulled by surrender.

Second. That the premiums due on it were not paid.

As respects the first we charge you that it is not sustained. The policy was not annulled. The transaction between the plaintiff's husband, Mr. Miles, who was her agent, and the defendant respecting it was not authorized by her, and therefore had no effect on her rights or obligations under the contract.

As respects the second we charge you that it is sustained and is fatal to the plaintiff's claim. The premiums, the payment of which was necessary to keep the policy alive, were not paid, and nothing has been shown, in the judgment of the court, which excuses or tends to excuse the failure to pay them. Whether the failure resulted from the agent's inability to pay or his unwillingness to pay is unimportant. He did not pay, and the principal must bear the consequences of his failure. It was her duty to have the payments made, and failing in this she cannot recover. She appears to have given the business no attention whatever, but to have left it entirely to her husband. She furnished him with no money to pay, and he
83 appears to have had none. He sought to do the best, as we are justified in believing, that he could do under the circumstances.

There is no evidence in the case to justify a finding that the defendants misled her or her agent, or that they were guilty of fraud or intentional wrong. In answer to the agent's declaration that he was unable to pay and that he therefore desired to surrender the policy and take another, paid up, they pointed out to him the disadvantages that would result to her from this course, and suggested instead a reduction simply of the policy to enable him to pay the premium due. He adopted the suggestion and delivered to the defendants (in answer to their demand) a paper executed in the plaintiff's name, representing the signature to be hers, taking a new policy for the reduced amount. When the premium became due on the reduced amount he again declared himself unable to pay, demanded a "paid-up policy" instead of the one held, and produced what purported to be a written authorization of this, in his wife's name, representing it to be signed by her.

In these transactions there is nothing, I repeat, to justify an imputation of fraud or intentional wrong to the defendants, or a suggestion that they misled the plaintiff or her agent. All she can claim respecting them is that they be treated as ineffectual, leaving her rights and obligations under the original policy to
84 stand undisturbed thereby; that the premiums on the policy were not paid as they matured is admitted, the plaintiff offering to pay them after her husband's death.

In view of this fact, I charge you, gentlemen, that the plaintiff cannot recover, and your verdict will be for the defendants.

Counsel for plaintiff has asked us to charge upon certain point which it is our duty to do. We are first asked to say:

"1. That if the company united with the agent and accepted the surrender of the policy in suit from him when he had no authority to make such surrender, and did this without notice to or knowledge of the plaintiff, they cannot complain of the non-payment of premium after such surrender and acceptance."

To that point I answer, the futile attempt to surrender the policy and the transaction referred to was nothing more in legal contemplation, had no effect whatever on the rights or obligations of either party. The defendants were not required to notify the plaintiff of the transaction, but they were fully justified in believing, by the conduct and representations of her agent and husband in presenting the paper, which purported to be signed by her, that she knew and authorized the transaction. There is nothing in what is stated
85 in the point sufficient to excuse her failure to pay the premium when it became due.

"2. If the surrender was made without authority, it was a wrongful act on the part of both the company and the agent, and the non-payment of the premium is not a bar to the recovery."

I disaffirm that point.

"3. The jury are the sole judges of the credibility of the statement of the witnesses as to what took place at the time of the surrender."

It is true, as a general proposition, that the jury are the judges of the credibility of the witnesses, but the jury are not at liberty to disbelieve the witnesses without finding something in their conduct or statements or in other evidence in the cause tending to discredit them, and such finding under the circumstances would be unjustifiable. Furthermore, if these witnesses were disbelieved and disregarded the result would not be varied. No conclusion that would justify the non-payment of the premiums would be permissible under the evidence even in the absence of their testimony.

"4. If the company accepted the surrender without taking due steps to ascertain whether Mrs. Miles had authorized it, this was such negligence as amounts to evidence of collusion."

I disaffirm that point.

As I have already charged you, gentlemen, there is nothing
86 here to justify a failure to pay the premiums, and in consequence of that failure the plaintiff cannot recover, and your verdict must be for the defendant.

(Plaintiff's counsel except to the learned judge's directions to the jury that under all the evidence in the case the plaintiff cannot recover, and that the verdict must be for the defendants.

Also to the learned judge's refusal to affirm plaintiff's first, second, third, and fourth points and to the answer to each of said points.

Also to the learned judge's instructions that as the evidence shows that the premiums were not paid, and as nothing has been shown to excuse such non-payment, the plaintiff cannot recover.)

Original of same number for $5,000, dated June 20th, 1877, surrendered for reduction of amount.

87 EXHIBIT "B."

No. 145,756. $4,300.

The Connecticut Mutual Life Insurance Company of Hartford, Connecticut.

Age, 37 in 1877. Premium, $120.57.

In consideration of the representations and declarations made to them in the application for this insurance and of the annual premium of one hundred and twenty dollars and fifty-seven cents ($120.57), to be paid to them on or before the twentieth day of June in every year during the continuance of this policy, do hereby insure the life of John S. Miles (the insured), of Philadelphia, county of Philadelphia and State of Pennsylvania, for the term of his natural life, in the sum of four thousand three hundred dollars ($4,300) for the sole use and benefit of Sarah G. Miles (the assured), wife of the said insured, the said sum insured to be paid at the office of this company, in Hartford, Connecticut, to the said assured or her legal representatives within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of his policy, or, if the said assured be not then living, the said sum insured shall be payable as above to her children, or to their guardian if under age, any balance of the year's premiums when not already paid at the beginning of the year or any indebtedness to this company on account of this policy being in either case first deducted therefrom.

This policy is issued and accepted upon the following express conditions and agreements:

88 First. That the answers, statements, representations and declarations contained in or endorsed upon the application for this insurance, which application is hereby referred to and made a part of this contract, are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation or concealment, then this policy shall be absolutely null and void; and further, that no answer, statement, representation or declaration made to any agent, solicitor, or any other person whatever, and not contained in said application, shall be taken or considered as having been made to or brought to the notice or knowledge of this company, and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation or declaration, and the said application, a copy of which is hereto annexed, shall be taken and held to be and contain the only answers, statements, representations or declarations made to this company in behalf of this insurance.

Second. That this policy shall not take effect until an advance premium hereon shall have been actually paid during the lifetime of the insured, and that if any subsequent premium on this policy

be not paid when due, then this policy shall cease and determine, and this company shall not be liable for the payment of the sum insured herein or any part thereof, and that no premium on this policy shall be considered as paid unless a receipt shall be given therefor signed by the president or secretary of the company.

Third. That the said insured is under this policy freely per-
89 mitted to reside in any civilized abode in the western hemisphere lying north of the thirty-second parallel of north latitude in the United States lying south of said thirty-second parallel (excepting from the first day of July to the first day of November), and in the eastern hemisphere lying north of the forty-second parallel of north latitude and west of the fortieth meridian of longitude east of Greenwich; and he may also pass as a passenger by the usual routes and means of public conveyance to any from any port or place within the foregoing limits, but if he shall at and time during the continuance of this policy pass beyond or be without the foregoing limits, or shall be personally engaged in blasting mining or submarine operations or in the manufacture of transportation of highly inflammable or explosive substances, or is employed in any capacity upon service on any sea, sound inland river lake or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntary or otherwise (the militia when not in actual service alone excepted) without the consent of this company previously given in writing in each or either of the foregoing cases, or if he shall die by suicide, or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delirium tremens or if he shall be convicted of felony, then in each and every of the foregoing cases, this policy shall become and be null and void.

Fourth. That in every case in which this policy shall cease and determine or shall be or become null and void, all premiums paid in respect of the same shall be forfeited to this company.

Fifth. That this policy shall not be assigned; but the company shall have power, but at its own discretion, to accept a sur-
90 render and discharge of the same by the assured.

Sixth. That if after the payment of two or more annual premiums upon this policy, the same shall cease and determine by default in the payment of any subsequent premium when due, then this company will grant a paid-up policy payable as above for such an amount as the then present value of this policy will purchase as a single premium: Provided that this policy shall be transmitted to and received by this company and application made for such paid-up policy during the lifetime of the said insured, and within one year after default in the payment of the premium thereon shall first be made.

Seventh. That the sum of — dollars of the first annual premium hereon is acknowledged as an indebtedness against this policy at six per cent. interest payable annually until paid or cancelled by return of surplus and that said indebtedness shall be due and payable at the maturity or other settlement of this policy.

In witness whereof, the said Connecticut Mutual Life Insurance

Company have by their president and secretary signed and delivered this contract in the city of Hartford, this twenty-eighth day of June A. D. one thousand eight hundred and eighty-six.

WILLIAM G. ABBOTT *Secretary*
JACOB L. GREEN *President*

Agents of the company have no authority to make alter or change any condition of the policy, nor to waive forfeiture thereof.
Ex'd. J.
Wife; ann. life.

91 Please notice that upon the third page of this policy is a full copy of the application upon the faith of which it was issued and which is a part of the contract of insurance in case of any error or omission in any answer or statement therein made in the policy with the proper correction of the application must be at once returned addressed to " The secretary of the Connecticut Mutual Insurance Company, Hartford Connecticut for the further consideration and action of the company.

(The application referred to is immaterial for the purposes of this bill, and the insertion of a copy of the same is waived by Mr. Hanson, ccunsel for the defendant.)

Indorsed: Statute of Connecticut respecting policies of insurance issued for the benefit of married women. Any policy of life insurance expressed to be for the benefit of a married woman or assigned to her or in trust for her shall inure to her separate use, or in case of her disease before payment, to the use of her children or of her husband's children, as may be provided in such policy, provided that if the annual premium on such policy shall exceed three hundred dollars, the amount of such excess with interest shall inure to the benefit of the creditors of the person paying the premium, but if she shall die before the person insured, leaving no children of herself or husband, the policy shall become the property of the person who has paid the premium, unless otherwise provided in such policy.

Proofs of death required: Blanks for the several certificates required to be made in proof of death will be furnished upon request.

*Please Notice.*

92 The premiums on this policy will be due and payable at the office of the company in Hartford Connecticut and not elsewhere unless for the time being to an agent of the company to whom a receipt for the renewal premium for any year may be sent for collection, but the receipt of premiums through an agent shall not be held to establish any binding precedent or custom as to the place of payment of premiums. The assured is hereby notified that the only evidence to him of the authority of any agent to receive any premium on account of this policy is a receipt in printed form signed by the president or secretary of the company. Notice of

premiums falling due are sent as regularly as possible but not as a matter of agreement but for convenience only and without any responsibility for omission or miscarriage.

No. 145,756. Term of life.

Connecticut Mutual Life Insurance Company.

Sum insured, $4,300.00, on the life of John S. Miles.

| | |
|---|---|
| Annual premium | $120 57 |
| Credit | |
| Cash premiums | 120 57 |
| Extra | |
| Policy | |
| Total cash payment | |

The annual premium on this policy is due and payable on the twentieth day of June.

Abst.

93 EXHIBIT No. 1.

Receipt in case of reduction.

Received of the Connecticut Life Insurance Co., of Hartford, Conn., the sum of eighty-two & $\frac{39}{100}$ dollars, which is hereby acknowledged as a full consideration and satisfaction for all claims and demands which we have or may have under or on account of seven hundred dollars of the amount of policy No. 145,756 released, quitclaimed, surrendered, and discharged to said company, said amount having been applied as follows:

| | |
|---|---|
| In part payment of 1886 premium on the remaining $4,300 of said policy | $82 39 |
| Applicable in payment of future payments on the same | |
| In reduction of premium note or credit | |
| In cancellation of accrued interest on the same | |
| Total as above | $82 39 |

Dated at Phila., Pa., this 20th day of June, A. D. 1886.

SARAH G. MILES.

EXHIBIT No. 2.

Receipt for value to apply in purchase of paid-up insurance.

Received of the Connecticut Mutual Life Insurance Co., of Hartford, Conn., the sum of five hundred eighty-three & $\frac{24}{100}$ dollars, which is hereby acknowledged as a full consideration and satisfaction for all claims and demands which we have or may have under or on account of policy No. 145,756 released, quitclaimed, surrendered, and discharged to said company, said amount having been applied as follows:

| | |
|---|---|
| In payment of a premium on a participating paid-up policy for eleven hundred & ninety-five dollars ($1,195) | $583 24 |
| In cancellation of premium note or credit | |
| In cancellation of accrued interest on the same | |
| Total as above | $583 24 |

Dated at Phila., Pa., this 20th day of June, A. D. 1887.

SARAH G. MILES.

94 The Connecticut Mutual Life Insurance Co.

HARTFORD, *February* 16, 1888.

W. H. Tilden, Esq., Philadelphia, Pa.

DEAR SIR: We have your- of the 15th instant, enclosing "proofs of death" of John S. Miles, formerly insured under our policy No. 145,756. We return the papers herewith. Please return them to Mr. Rand, from whom they were received, and say to him that policy No. 145,756 is not in force, and that the company acknowledges, therefore, no liability thereunder and declines to receive the "proofs." If, as Mr. Rand claims, the signature to the release for reduction in 1886 was a forgery and the release therefore void, the premium for that year remained unpaid, and, whether such signature be a forgery or not, the premium due in June, 1887, remains unpaid and the policy is void.

Respectfully yours, D. H. WELLS, *Actuary.*

95 No. 145,756. $5,000.

The Connecticut Mutual Life Insurance Company of Hartford, Conn.

Age, 37. Premium, 140.20.

In consideration of the representations and declarations made to them in the application for this insurance and of the annual premium of one hundred and forty dollars and twenty cents, to be paid to them on or before the twentieth day of June in every year, during the continuance of this policy, do hereby insure the life of John S. Miles (the insured), of Philadelphia county of Philadelphia and State of Pennsylvania for the term of his natural life, in the sum of five thousand dollars, for the sole use and benefit of Sarah G. Miles (the assured), wife of the said insured. The said sum insured to

be paid at the office of this company, in Hartford, Conn., to the assured or her legal representatives, within ninety days after due notice and satisfactory evidence of the death of the said insured during the continuance of this policy; or if the said assured be not then living, the said sum insured shall be payable as above, to her children, or to their guardian, if under age; any balance of the year's premium, when not all paid at the beginning of the year or any indebtedness to this company on account of this policy, being in either case first deducted therefrom.

This policy is issued and accepted upon the following express conditions and agreements:

1st. That the answers, statements, representations and declarations contained in or indorsed upon the application for this insurance—which application is hereby referred to and made a part of this contract—are warranted by the assured to be true in all respects, and that if this policy has been obtained by or through any fraud, misrepresentation or concealment, then this policy shall be absolutely null and void; and further, that no answer, statement, representation or declaration made to any agent, solicitor, or any other person whatever, and not contained in said application shall be taken or considered as having been made to or brought to the notice or knowledge of this company; and this company shall be held and considered as having no notice or knowledge of such answer, statement, representation or declaration; and the said application, a copy of which is hereto annexed, shall be taken and held to be and to contain the only answers, statements, representations or declarations made to this company in behalf of this insurance.

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2nd. That this policy shall not take effect until the advance premium hereon shall have been actually paid during the lifetime of the insured; and that if any subsequent premium on this policy be not paid when due then this policy shall cease and determine, and this company shall not be liable for the payment of the sum insured herein, nor of any part thereof, and that no premium on the policy shall be considered as paid unless a receipt shall be given therefor, signed by the president or secretary of the company.

3rd. That the said insured is, under this policy, freely permitted to reside in any civilized abode in the Western Hemisphere lying north of the thirty-second parallel of north latitude, in the United States lying south of said thirty-second parallel (excepting from the first day of July to the first of November), and in the Eastern Hemisphere lying north of the forty-second parallel of north latitude, and west of the fortieth meridian of longitude, east from Greenwich; and he may also pass as a passenger; by usual routes and means of public conveyance, to and from any port or place within the foregoing limits, but if he shall at any time during the continuance of this policy pass beyond or be without the foregoing limits; or shall be personally engaged in blasting, mining, or submarine operations, or in the manufacture or transportation of highly inflammable or explosive substances or as an em-

ployee in any capacity upon service on any sea, sound, inlet, river, lake or railroad, or if he shall enter into any military or naval service whatsoever, whether voluntarily or otherwise (the militia, when not in actual service, alone excepted); without the consent of this company previously given in writing in each or either of the foregoing cases; or if he shall die by suicide, or in consequence of his violation of any law, or if he shall become so far intemperate as to impair his health or induce delirium tremens, or if he shall be convicted of felony,—then, in each and every of the foregoing cases, this policy shall become and be null and void.

4th. That in every case in which this policy shall cease and determine, or shall be or become null and void, all premiums paid in respect of the same shall be forfeited to this company.

5th. That this policy shall not be assigned; but the same may be surrendered to this company and discharged at any time by the assured, if living, and, after her death, by the beneficiary
97 hereof under the statutes of Connecticut.

6th. That if after the payment of two or more annual premiums upon this policy, the same shall cease and determine by default in the payment of any subsequent premium when due then, this company will grant a paid-up policy payable as above, for such amount as the then present value of this policy will purchase, as a single premium: Provided that this policy shall be transmitted to and received by this company, and application made for such paid-up policy during the lifetime of the said insured and within one year after default in the payment of premium hereon shall first be made.

7th. That the sum of — dollars, of the first annual premium hereon, is acknowledged as an indebtedness against this policy at six per sent. —, payable annually until paid or cancelled by returns of surplus, and that said indebtedness shall be due and payable at the maturity or other settlement of this policy.

In witness whereof, the said Connecticut Mutual Life Insurance Company have by their president and secretary signed and delivered this contract in the city of Hartford, this twentieth day of June A. D. one thousand eight hundred and seventy-seven.

JACOB L. GREENE, *Secretary.*

E. B. WATKINSON,
*Vice-President.*

Agents of the company have no authority to make, alter, or change any condition of the policy, nor to waive forfeitures thereof.

Ex'd: J.
Wife; ann. life.

Please notice, that upon the third page of this policy is a full copy of the application upon the faith of which it is issued, and which is a part of the contract of insurance. In case of any error or omission in any answer or statement therein made, the policy, with the proper correction of the application, must be at once returned, addressed to "The secretary of the Conn. Mutual Life Ins.

Co., Hartford, Conn.," for the further consideration and action of the company.

98 Copy of application written by H.
Copy of application examined by H.

These blanks are to be filled at the home office.

No. ——; age, —— years.
Amount, $——.
Ann. premium, $—— $\frac{}{100}$; H., $ —— $\frac{}{100}$.
Cr. premium, $——; ex., $—— $\frac{}{100}$.

L. term, —— years, table ——.
P. life, table ——.
P. end —— years, table ——.
Policy dated ——, 1888.
Policy written by ——; examined by ——.

Agents must not fill the above blanks.

*Application for Insurance in the Connecticut Mutual Life Insurance Company of Hartford, Connecticut.*

Statement of particulars by the person whose life is proposed for insurance, which forms a part of the contract for insurance.

1. Name of the person whose life is proposed for insurance. John S. Miles.
   Occupation, to be stated specifically. Shoe manufacturer, 49 S. 4th St.
   Residence. Place, 633 No. 13th St.; county, Philadelphia; State, Pennsylvania.
2. A—How much insurance is desired? Ans. $5,000, five thousand dollars.
   B—Is the policy to be for the term of life? Ans. Yes.
   Or endowment insurance maturing at the end of — years (or on previous death)? Ans. —.
   Or are the premiums to be paid in full in — years? Ans. —, by table.
   C—Are the premiums to be payable during the whole term of the policy? Ans. Yes, by table A.
   D—Is the premium to be paid annually or semi-annually? Ans. Annually.

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   E—Is the premium to be paid in full in cash or with part credit for the first year? Ans. All cash.
3. A—When and where were you born? Ans. In Philadelphia, on the 6th day of the month of October—State or county, Pa.—in the year 1840.
   B—What will be your age at next birthday? Ans. 37 years.
   Are you married? Ans. Yes.
   Or single? Ans. —.

4. A—Is there now any insurance on your life? Ans. Yes.
   B—If, in this company, state the No. of policy and amount. Ans. No. —, for $—; No. —, for $—.
   C—If, in other companies, state the name of each company and amount insured in each. Ans. In the Mutual N. Y. Co. for $7,500; in the Ætna Co. for $5,000; in the Continental Co. for $2,500; in the — Co. for $—.
   D—Has any company ever declined to grant insurance on your life? Ans. No.
   If so, what company and how long since? Ans. —.
   E—Has any opinion ever been sought from or any consultation ever held with any officer of any life insurance company or any physician or surgeon as to whether your life was safely insurable? Ans. Yes.
   F—If so, was any decision or opinion given that you were or that you were not safely insurable? Ans. Safely insurable.
5. A—Have you ever resided out of the United States? Ans. No.
   B. Or south of the southerly line of Tennessee? Ans. No.
   C—If so, where and for what period? Ans. —.
   D—What disease did you have during this period? Ans. —.
6. A—Have you ever been successfully vaccinated? Ans. Yes.

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   B—What is the present state of your health? Ans. Good.
7. Have you ever had any of the following diseases? Answer (yes or no):
   Apoplexy? No. Diphtheria? No. Paralysis? No. Bronchitis? No. Insanity? No. Spitting of blood? No. Epilepsy? No. Habitual cough? No. Habitual headache? No. Asthma?

100 No. Fits? No. Scarlet fever? No. Consumption? No. Dyspepsia? No. Pneumonia? No. Colic? No. Pleurisy? No. Rupture? No. Fistula? No. Syphilis? No. Piles? No. Rheumatism? No. Affection of liver? No. Gout? No. Affection of spleen? No. Neuralgia? No. Fever and ague? No. Dropsy? No. Disease of the heart? No. Scrofula? No. Palpitation? No. Smallpox? No. Aneurism? No. Yellow fever? No. Disease of the urinary organs? No. Cancer or any tumor? No.

   If you have a rupture, state whether you habitually wear a truss.

   State the number of attacks, character, and duration of all the diseases which you have had.
8. Have you had any other illness, local disease, or personal injury? And, if so, of what nature, how long since, and what effect on general health? No.
9. Is there now existing any disorder or any infirmity or weakness? No.
10. Are you, or have you ever been, addicted to the use of alcoholic beverages, opium, or other stimulants? No.
11. State your family history.

1 grandparents living; ages, 88; health good.
1 grandparents dead; ages, 76; cause of death, old age.
72; don't know as to the other.
Father living; age, 60; health good.
Father dead; age, —; cause of death, —.
Mother living; age, 60; health good.
Mother dead; age, —; cause of death, —.
2 brothers living; ages, 33, 28; health good.
0 brothers dead; ages, —; cause of death, —.
2 sisters living; ages, 35, 31; health good.
0 sisters dead; ages, —; cause of death, —.

12. A—Has any branch of your family been subject to insanity, or to any pulmonary, scrofulous, or other hereditary disease? Ans. No.
B—Have your ancestors generally reached old age? Ans. Yes.
13. Are you now, or have you ever been, in any military or naval service? If so, when, how long, and in what capacity?

101 14. How long since you were attended by a physician? For what diseases? Give name and residence of such physician. Not since childhood.
Name and residence of your usual medical attendant? Dr. Wm. Read is my family Dr., 11th and Cherry St.; has known me 15 years.
Name and residence of an intimate friend? David B. Saylor, Philada.; has known me 12 years.
15. Is there any fact relating to your physical condition, personal or family history, which has not been stated in the answers to the foregoing questions and with which the officers of the company ought to be made acquainted? No.
16. Have you reviewed the answers to the above questions and are you sure that they are correct? Yes.
17. For whose benefit is this insurance to be effected? Write all names in full. Sarah G. Miles.
Relationship to the life insured. Wife.
In case of endowment insurance, state here to whom the sum is to be paid, if the person insured survives the term.

It is hereby declared and warranted that the above are fair and true answers to the foregoing questions, and that no statements respecting the physical condition, habits, personal or family history of the person whose life is proposed for insurance other than those above made have been made to any agent, solicitor, examiner, or other person in behalf of the company; and it is acknowledged and agreed by the undersigned that this application shall form a part of the contract of insurance, and that if there be in any of the answers herein made any untrue or evasive statements or any misrepresentations or concealment of facts, then any policy granted upon this application shall be null and void and all payments made thereon shall be forfeited to the company; and it is further declared by the undersigned that the party making this ap-

plication has an "insurable interest" in the life above proposed for insurance to the full amount applied for.

102 Dated at Philadelphia this 19th day of June, 1877.

Signature of the person or persons for whose benefit the insurance is to be effected:

SARAH G. MILES,
(Write all names in full.)
By JOHN S. MILES.

Signature of the person whose life is proposed for insurance:
(Write the name in full.)
JOHN S. MILES.

Witness to the signing hereof:
WALTER H. TILDEN.

Instructions as to signatures: A husband may sign for his wife, thus "Mary Jones by John Jones." When insurance is desired for the benefit of minor children it should be signed, *e. g.* "John Jones as guardian (or trustee) for Anna B. Lucy M. and Charles Jones, my children, or (children of—— ——"). When the policy is taken in the person's own name one signature is sufficient.

*Please Notice.*

The premiums of this policy will be due and payable at the office of the company in Hartford, Conn., and not elsewhere unless for the time being to an agent of the company to whom the receipt for the renewal premium for any year may be sent for collection; but the receipt of premiums through an agent shall not be held to establish any binding precedent or custom as to the place of payment of premiums.

The assured is hereby notified that the only evidence of the authority of any agent to receive any premium on account of this policy is a receipt in printed form signed by the president or secretary of the company.

Notice of premiums falling due are sent as regularly as possible but not as a matter of agreement but for convenience only and without any responsibility for omission or miscarriage.

*Statute of Connecticut Respecting Policies of Insurance Issued for the Benefit of Married Women.*

Any policy of life insurance, expressed to be for the benefit of a married woman, or duly assigned to her, or in trust for her

103 shall inure to her separate use or in case of her decease before payment to the use of her children, or of her husband's children as may be provided in said policy: Provided, that if the annual premium on such policy shall exceed three hundred dollars, the amount of such excess with interest, shall inure to the benefit of such creditors of the person paying the premium; but if she shall

die before the person insured, leaving no children of herself or husband, the policy shall become the property of the person who has paid the premiums, unless otherwise provided by said policy.

*Proofs of Death Required.*

Blanks for the several certificates required to be made in proof of death will be furnished upon request.

No. 145,756. Term of life. Annual premium.

Reduced. G. S. Gilman.

The Connecticut Mutual Life Insurance Company.

Sum insured, $5,000, on the life of John S. Miles.
Annual premium, $140.20.
Credit premium, ——.
Cash premium, 140.20.
Extra premium, ——.
Policy, ——.
Total cash payment, ——.
The annual premium on this policy is due and payable on the twentieth day of June.
Abst. 32.

| | |
|---|---|
| No. 145,756. | Age, 37; kind, L. |
| Amount, $5. | Credit, $——. |
| Red. amount, 4,300. | Am't red., 700. |
| Red. cr., ——. | Cr. red., $——. |

| | |
|---|---|
| Cash value applied | 82 39 |
| Accrued interest | |
| Total value | 82 39 |

When red., 6, 28, '86.
No. agency, 6. Check.

104 Endorsed: C. P. 3. No. 168. Dec. 3, 1888. Sarah G. Miles *vs.* The Connecticut Mutual Life Ins. Co. Pl'ff's statement. Filed Nov. 30, 1888. R. F. Clay, pro proth'y. Rand.

105 And thereupon the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion of the said court; and inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided; and thereupon the aforesaid judge, at the request of the said counsel for the plaintiff, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this seventh day of May, A. D. 1889.

WM. BUTLER, *J.* [L. S.]

(Endorsed:) Sarah G. Miles *v.* Connecticut Mutual Life Ins. Company. Bill of exceptions. Filed May 7, 1889.

106 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

SARAH G. MILES
*vs.*
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.
} No. 24. October Sess., 1888.

Know all men by these presents that we, Sarah G. Miles, residing in the city of Philadelphia, State of Pennsylvania, as principal, and Thomas Miles, residing at 1820 Arch street, and Thomas H. Miles, residing at 1820 Arch street, both of the city of Philadelphia, State of Pennsylvania, as sureties, are held and firmly bound unto the Connecticut Mutual Life Insurance Company in the full and just sum of five hundred dollars, to be paid to the said The Connecticut Mutual Life Insurance Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of June, A. D. 1889.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between Sarah G. Miles, plaintiff, and The Connecticut Mutual Life Insurance Company, defendant, judgment was rendered against the said plaintiff, and the said plaintiff having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the
107 aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now, the condition of the above obligation is such that if the said Sarah G. Miles shall prosecute her writ of error to effect and answer all damages and costs if she fails to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

SARAH G. MILES. [SEAL.]
THOMAS MILES. [SEAL.]
THOMAS H. MILES. [SEAL.]

Sealed and delivered in presence of—
SAMUEL BELL.
JOHN A. MERRICK.

Approved.
WM. BUTLER, *Judge.*

[Endorsed:] No. 24. October sess., 1888. Circuit court United States. Miles *vs.* The Connecticut Mutual Life Ins. Co. Bond surwrit of error. Filed June 14, 1889.

108 UNITED STATES OF AMERICA, } *sct:*
*Eastern District of Pennsylvania,* }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of Sarah G. Miles *vs.* The Connecticut Mutual Life Insurance Company, No. 24, October session, 1888, on file and now remaining among the records of the said court in my office.

Seal U. S. Circuit Court, E. D. Pennsylvania.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 13th day of September, in the year of our Lord one thousand eight hundred and eighty-eight, and of the Independence of the United States the one hundred and thirteenth.

SAMUEL BELL,
*Clerk of C. C.*

109 U. S. C. C., Oct., 1888.

SARAH G. MILES
*vs.*
CONNECTICUT MUTUAL LIFE INSURANCE COMPANY. } No. 24.

*Assignments of Error on Behalf of Sarah G. Miles, Plaintiff.*

First. The learned court below erred in not affirming the first point submitted by the plaintiff, which was as follows: "That if the company united with the agent and accepted the surrender of the policy in suit from him when he had no authority to make such surrender and did this without notice to or knowledge of the plaintiff they cannot complain of the non-payment of the premiums after such surrender and acceptance," and in making the following answer thereto: "To that point I answer, The futile attempt to surrender the policy (and the transaction referred to was nothing more in legal contemplation) had no effect whatever on the rights or obligations of either party. The defendants were not required to notify the plaintiff of the transaction, but they were fully justified in believing by the conduct and representations of her agent and husband in presenting the paper which purported to be signed by her that she knew and authorized the transaction. There is nothing in what is stated in the point sufficient to excuse her failure to pay the premium when it became due."

Second. The learned court below erred in refusing to affirm plaintiff's second point, which was as follows: "If the surrender was made without authority it was a wrongful act on the
110 part of both the company and the agent, and the non-payment of the premium is not a bar to the recovery."

Third. The learned court below erred in not affirming the plaintiff's third point, which was as follows: "The jury are the sole judges of the credibility of the statements of the witnesses as to what took

place at the time of the surrender," and in making the following answer thereto: "It is true, as a general proposition, that the jury are the judges of the credibility of the witnesses, but the jury are not at liberty to disbelieve the witnesses without finding something in their conduct or statements or in other evidence in the cause tending to discredit them, and such finding, under the circumstances, would be unjustifiable. Furthermore, if these witnesses were disbelieved and not regarded the result would not be varied. No conclusion that would justify the non-payment of the premiums would be permissible under the evidence, even in the absence of their testimony."

Fourth. The learned court below erred in declining to affirm plaintiff's fourth point, which was as follows: "If the company accepted the surrender without taking due steps to ascertain whether Mrs. Miles had authorized it, this was such negligence as amounts to evidence of collusion."

Fifth. The learned court below erred in charging the jury as follows: "As respects the second (defence that the premiums due on the policy were not paid), we charge you that it is sustained and is fatal to the plaintiff's claim. The premiums, the payment of which was necessary to keep the policy alive, were not paid, and
111 nothing has been shown, in the judgment of the court, which excuses or tends to excuse the failure to pay them. Whether the failure resulted from the agent's inability to pay or his unwillingness to pay is unimportant. He did not pay, and the principal must bear the consequences of his failure. It was her duty to have the payments made, and failing in this she cannot recover."

Sixth. The learned court below erred in charging the jury as follows: "As I have already charged you, gentlemen, there is nothing here to justify a failure to pay the premiums, and, in consequence of that failure, the plaintiff cannot recover and your verdict must be for the defendant."

Wherefore the plaintiff prays that the said judgment of the court below be reversed.

JAMES A. DEVELIN,
THEO. D. RAND,
RICHARD P. WHITE,
*Att'ys for P'ff.*

Endorsed on cover: Case No. 13,640. E. Pennsylvania C. C. U. S. No. 421. Sarah G. Miles, plaintiff in error, *vs.* The Connecticut Mutual Life Insurance Company. Filed September 19, 1889.

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JAMES H. McKENNEY,
Clerk.

Term No. ~~491~~ 92 October Term, 1892

IN THE

# Supreme Court of the United States

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SARAH G. MILES
*Plaintiff in Error*

*vs.*

THE CONNECTICUT MUTUAL LIFE INSURANCE CO.

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In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania

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# BRIEF FOR PLAINTIFF IN ERROR

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JAS. AYLWARD DEVELIN
RICHARD P. WHITE
*Counsel for Plaintiff in Error*

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IN THE

# Supreme Court of the United States,

October Term, 1891. No. 421.

SARAH G. MILES,
*Plaintiff in Error,*

*vs.*

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY,
*Defendant in Error.*

**In Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.**

## Brief for Appellant.

### I.

### Statement of the Case.

This was a suit upon a $5,000 Life Insurance policy payable to the wife and alleged to have been wrongfully surrendered to the Insurance Company by the husband upon the day the tenth premium became due.

The facts may be briefly stated as follows: John S. Miles insured his life in the defendant company for the benefit of his wife, Sarah G. Miles, the plaintiff. Policy dated June 20, 1877, for $5,000.

Premiums were paid till June 20, 1886, when John S. Miles surrendered the policy and in exchange therefor took out a new policy for $4,300, also payable to his wife. One year later he surrendered this policy and took in exchange therefor a paid-up policy for $1,195, payable to his wife.

*These surrenders and exchanges were made without the wife's knowledge or assent, and were totally unauthorized.*

At the time of the first surrender Mr. Miles was in consumption, and at the time of the exchange of the $4,300 policy for the $1,195 policy he was so far gone in that disease that his condition was palpable to the ordinary observer. He died within seven months thereafter, during which time he was for the most part confined to the house.

Mrs. Miles sent in proofs of death and upon demanding her $5,000 was informed by the company's agent that her husband had, by his, the agent's, advice, surrendered the $5,000 policy, and that the only policy in force was the paid-up policy for $1,195.

The agent further claimed to have her receipt and release of the $5,000 policy, but was at once informed that she had never signed any such paper and inspection of the papers was demanded.

The alleged release was sent for to Hartford, and on being produced was found not to be in Mrs. Miles's handwriting.

Upon each of the occasions when the two policies were surrendered and reduced Mr. Miles was given a receipt and release to have signed by Mrs. Miles. He was sent away by the company's representative to secure Mrs. Miles's signature and subsequently returned on the day when the premium became due with this paper having her name written upon it. This signature did not resemble Mrs. Miles's in any particular. She had not given her husband any authority to sign her name and had not been spoken to by him in reference to a reduction or surrender of the policies, but on the contrary believed that her husband had paid all the premiums as they came due in

accordance with his promise to that effect. So soon as she learned that the policy had been cancelled by the company, Mrs. Miles demanded its reinstatement and tendered the amount of the premiums then due, which the company declined to receive.

Suit was brought on the $5,000 policy and the foregoing facts were proved as plaintiff's case.

The defence admitted these facts, but set up that Mr. Miles had told them he was unable to pay the premiums, and that they had advised in view of such inability, first, that he take a reduced policy, and afterwards that he take a paid-up policy: That they gave him forms in each case for Mrs. Miles to sign, and that he returned them with Mrs. Miles's name written thereon, and that they supposed it was her signature. They, therefore, claimed

1. That the policy sued on was surrendered and cancelled.

2. That if the surrender was void the policy was forfeited by reason of the non-payment of premiums after such surrender.

The learned Court below was against the defendant in its first position, but was with it upon the second, and so gave binding instructions to the jury to render a verdict for the defendant. It is because of this error in the charge of the Court and the refusal to affirm the plaintiff's points, and the Court's answers thereto (to all of which exceptions were taken and a bill therefor sealed), that the plaintiff bases her right to a reversal.

## II.

## Assignments of Error.

*First.*—The learned Court below erred in not affirming the first point submitted by the plaintiff, which was as follows: "That if the company united with the agent and accepted the surrender of the policy in suit from him when he had no authority to make such surrender, and did this without notice to, or knowledge of, the plaintiff, they cannot complain of the non-payment of the premiums after such surrender and acceptance," and in making the following answer thereto: "To that point I answer: The futile attempt to surrender the policy (and the transaction referred to was nothing more in legal contemplation) had no effect whatever on the rights or obligations of either party. The defendants were not required to notify the plaintiff of the transaction, but they were fully justified in believing by the conduct and representations of her agent and husband in presenting the paper which purported to be signed by her that she knew and authorized the transaction. There is nothing in what is stated in the point sufficient to excuse her failure to pay the premium when it became due."

*Second.*—The learned Court below erred in refusing to affirm plaintiff's second point, which was as follows: "If the surrender was made without authority it was a wrongful act on the part of both the company and the agent, and the non-payment of the premium is not a bar to the recovery."

*Third.*—The learned Court below erred in not affirming the plaintiff's third point, which was as follows: "The jury are the sole judges of the credibility of the statements of the witnesses as to what took place at the time of the surrender," and in making the following answer thereto: "It is true, as a general proposition, that the jury are the judges of the credibility of the witnesses, but the jury are not at liberty to disbelieve the witnesses without finding

something in their conduct or statements or in other evidence in the cause tending to discredit them, and such finding, under the circumstances, would be unjustifiable. Furthermore, if these witnesses were disbelieved and not regarded the result would not be varied. No conclusion that would justify the non-payment of the premiums would be permissible under the evidence, even in the absence of their testimony."

*Fourth.*—The learned Court below erred in declining to affirm plaintiff's fourth point, which was as follows: "If the company accepted the surrender without taking due steps to ascertain whether Mrs. Miles had authorized it, this was such negligence as amounts to evidence of collusion."

*Fifth.*—The learned Court below erred in charging the jury as follows: "As respects the second (defence that the premiums due on the policy were not paid), we charge you that it is sustained and is fatal to the plaintiff's claim. The premiums, the payment of which was necessary to keep the policy alive, were not paid, and nothing has been shown, in the judgment of the Court, which excuses or tends to excuse the failure to pay them. Whether the failure resulted from the agent's inability to pay or his unwillingness to pay is unimportant. He did not pay, and the principal must bear the consequences of his failure. It was her duty to have the payments made, and failing in this she cannot recover."

*Sixth.*—The learned Court below erred in charging the jury as follows: "As I have already charged you, gentlemen, there is nothing here to justify a failure to pay the premiums, and, in consequence of that failure, the plaintiff cannot recover, and your verdict must be for the defendant."

## III.

## Argument.

A.

John S. Miles was an agent for a special purpose only, that was to pay the premiums when they fell due. It cannot be contended that his authority extended beyond that point, or that his principal was in any wise responsible for anything he might do outside of it. Mrs. Miles, the beneficiary, testified that she not only never authorized her husband to surrender or reduce the $5,000 policy, but that they never had any talk upon the subject at all. She rested securely in the fact that the policy was in force until she was notified by the company, after her husband's death, that they had cancelled it.

The learned trial Judge, in his charge to the jury (Record, p. 39), and in his opinion overruling the motion for a new trial (Record, p. 18), admits that the surrender of the policy by John S. Miles was an act entirely beyond his authority, and that that surrender and the forged receipt and release were without effect upon the rights of the beneficiary in the policy.

The learned Judge does not accept the conclusion, however, which seems inevitably to follow, viz.: That the defendant company, being guilty of a wrongful act in cancelling the policy, and after thus declaring their intention not to be bound by its provisions, cannot take advantage of any failure on the part of the plaintiff to make a tender which by their own act they gave notice they would not receive. If the insured, Mr. Miles, was not authorized to act for his wife in any matter touching the surrender of the policy, she cannot be said to have held him out as trustworthy in anything connected therewith. She vouched for him and his conduct only so far as the payment of premiums were concerned. Outside of that sphere any one dealing with him dealt with him at their own peril.

Mr. Miles was the messenger of Mrs. Miles to pay the premiums upon her policy, and when the Insurance Company dealt with him in another character, and for another purpose, they made him their agent, and acted upon his report at their peril.

The notion that because Miles was an agent for one purpose, that therefore he was held out by Mrs. Miles as trustworthy (which, in this connection, is only another word for "authorized") for every other purpose, is the vice which runs through the learned Judge's view of the case. If an utter stranger to Mrs. Miles had done what her husband did without authority, it can hardly be doubted but that the learned Judge would have said to the company, "You have declared, by your act, the contract at an end, and you cannot excuse yourself by saying that your confidence was abused, and that you acted upon information which turned out to be false."

"It cannot be claimed that from the mere relation of husband and wife, a feme covert is bound in respect to her separate property by the admissions and declarations of her husband."

"An authority to make a contract for another is not sufficient to authorize its cancellation or surrender." *Fraternal Ins. Co.* vs. *Applegate*, 7 Ohio St. Rep., 292; *Stillwell* vs. *Mutual Ins. Co.*, 72 N. Y., 385.

It matters not that the company acted in good faith. They were bound absolutely to carry out every provision of their contract, and when they declared it at an end before there had been any default upon the part of the plaintiff, that was a distinct breach of contract, for which they thereupon became liable, and from which they can take no advantage whatever. The principle was stated in *Garner* vs. *Germania Life Insurance Co.*, 110 N. Y., 266, thus: "No bad faith is imputed here, yet good faith cannot be asserted of one who aids in the diversion of a known trust-fund, and the fact of waiver is not changed by the motive, good or bad, of the insurer."

We are contending for two principles. First, that the policy of the law demands that an agent should never be put into the temptation of placing his interest in conflict with his duty; and, secondly, that when one party to a contract declares it at an end he cannot afterwards treat his act as inoperative, and insist upon a forfeiture for the failure of the other party to perform.

The law certainly would not permit this agent to be put into the position where, by collusion with the insurance company, he could make it his interest to violate his duty to pay the premiums. It is not necessary for the plaintiff to show that any collusion did occur. The policy of the law is intent upon taking away all opportunity or inducement for such conduct, and to that end dictates that the other party to the transaction shall take no benefit from it. The defendant company put into the hands of the agent the means by which he could avoid the performance of his duty. They cannot now set up, as a defence, the failure to perform.

It is exceedingly important to bear in mind that the cancellation of the policy in question occurred before the day when the premium was payable had ended, so that the plaintiff was in no default whatever when the company annulled and renounced its contract. If the company had not taken the policy and cancelled it, we are entitled to the presumption that the agent for the payment of the premium would either have paid it himself, or would have notified his principal of his inability to do so, and that she would have paid it. Mrs. Miles and her family and friends knew of the consumptive condition of her husband, and it cannot be doubted but that she or they would have paid the premium rather than have a reduction made.

It is inaccurate to say that the surrender of the policy in question was either void or voidable. There was no surrender at all. *We have nothing in the transaction but the act of the Company in unlawfully annulling, renouncing and*

*cancelling its contract and policy.* Not having been done with Mrs. Miles's consent such cancellation must be considered as having been done against her consent. She cannot be presumed to have consented without knowledge. We have, therefore, nothing but the ordinary case of a recission of a contract by one party which relieves the other party from performance or tender of performance.

It does not lie in the mouth of the defendant to say that the premiums would not have been paid anyway. A possibility is all that it is incumbent upon us to allege. If any presumption is to be entertained it must be the presumption that if the Company had not united with the agent in the wrongful surrender to the prejudice of plaintiff's right the agent would either have paid the premium or would have given his principal timely notice so that she could have paid them. This was what his duty called upon him to do and the presumption is that a man will be true to his duty and not that he will be false to it.

The defendant who agrees that payments shall not be made is not entitled to claim the benefit of any speculations as to what might or might not have been done if it had not so agreed. Certainly no such speculations will be permitted to the defendant in aid of its claim of forfeiture unless the doctrine that the law abhors forfeitures is to be reversed in the case of Life Insurance, which would seem to be the case of all others in which it should be rigidly enforced.

Furthermore, the plaintiff was entitled to go to the Jury upon the question as to whether the action of the Company in accepting a surrender of the policy was in good faith. It is true the plaintiff gave no direct evidence upon this subject nor in the nature of things could she. But she did show circumstances from which the Jury would be justified in finding that the defendant and its agents had not acted with good faith nor with proper regard for her rights. At the time the insured made the surrender he was in consumption. "Anybody could see," says Mrs.

Miles (Record page 22), "for a year before my husband's death that he was in very poor health—very poor health." The signature to the release and receipt were written by Mr. Miles: palpably in a man's, not in a woman's handwriting. Neither was there any witness to this paper. All the circumstances surrounding this transaction were of a nature to excite suspicion and should have been submitted to the Jury upon the question of good faith.

The importance of this matter to the plaintiff is our excuse for a little further elaboration of the points involved.

The company advised the wrongful surrender, which they must have seen was a sacrifice of the plaintiff's interests. True, they asked for the production of written authority, but they accepted what was falsely alleged to be such authority without question or investigation. Was this because they had no suspicion, or because they did not think it was to their interest to inquire?

Why should they investigate? They saw that the insured was the victim of a fatal disease approaching its inevitable termination.

If the authority was genuine, they had procured the substitution of a liability of $1,195 for one of $5,000.

If the authority was false, they had, first, the chance that the widow would submit to the loss sooner than expose her dead husband; and second, they would secure grounds for the defence now made, as by their actions they would have prevented the payment of future premiums.

It is not wonderful that, under such circumstances, they overlooked the masculine handwriting of the signature; that they asked for no subscribing witnesses; that they took no steps to ascertain that the owner of the policy had really agreed to such a sacrifice of her interests.

It may be said that they were misled by the story of the husband, that he could not raise the money to pay the premiums; but was such a statement credible? They

saw Mr. Miles's condition; they knew, or might easily have known, that Mrs. Miles had friends amply able to assist her. Even if they had not this knowledge, it was a fair presumption that she had, and whether this is so, or not, they certainly knew that the holder of a policy for $5,000 on the life of a man dying of consumption would have had no difficulty in borrowing money even from strangers on the security of the policy itself.

Mr. Miles may not have known this, for, like all consumptives, he was probably ignorant that his end was near when that fact was plain to every other person who saw him.

Such a bargain under such circumstances is itself evidence of collusion. At the least, it raises a presumption that the defendants were not unwilling to be deceived into a bargain in which they had everything to gain and nothing to lose.

But suppose that they were in good faith deceived. Was Mrs. Miles accountable for this. She did not accredit her husbsnd to them in any confidential capacity.

He paid premiums due on the policy, but he required no authorization to do that. Any one who tendered the money could have paid the premiums, and his so doing would raise no inference that he had authority to do more.

That he was Mrs. Miles's husband implied no authority to assign ór dispose of her separate property.

They knew from their conversations with him that he had undertaken to pay, and the presumption, therefore, was that the wife was relying on him to do so. Their offer of a paid-up policy and their advice to him to accept it, induced him to make the wrongful surrender and exchange, and the company by their complicity in this fraud on Mrs. Miles, whether knowingly or not, placed him in a position where he must conceal the fact that the premiums were unpaid, as to speak would be to expose his own wrong doing.

If they had said Mrs. Miles's signature must be verified, or the premiums must be paid; otherwise we will forfeit the policy, can there be a doubt that Mr. Miles would have applied to his father for the money, or, failing in that, that he would have communicated the facts to his wife and given her the opportunity to save the policy by raising the money among her own friends or his?

The defendants effectually prevented this, and now seek to take advantage of a default which they themselves brought about.

It is submitted that there was evidence here to carry the case to the jury on the question of fraud, and that in any case the defence failed,

*First.*—Because after wrongful cancellation of the policy the company's right to demand premiums ceased.

*Second.*—Because the company is estopped from claiming premiums on a policy which they claimed to be non-existent.

*Third.*—Because the company is estopped from taking advantage of a default which they brought about by their own wrongful action.

B.

**Authorities.**

While the beneficiary lives no surrender of the policy without his assent or non-payment of premiums after such surrender will defeat his right. Non-payment of premiums after such an attempted wrongful surrender without notice to the beneficiaries will not forfeit the policy. May on Insurance, vol. 2, §399 P.

In *Hight* vs. *Continental Life Ins. Co.*, 10 Ins. Law Journal 223, the assured had the right by the terms of the contract to pay the premiums half in cash and half by note. The assured paid four premiums in that way. Prior to the fifth premium becoming due, the defendant notified

the assured that it would accept payment of the entire premium in cash only. The company defended on the ground of the non-payment of this premium. Held, per GRESHAM, J., By refusing to accept the premium as stated the company had violated its contract and this violation excused the assured from making any formal tender of the amount due from him in money and by his note.

The case of *Whitehead* vs. *New York Life Ins. Co.*, 102 N. Y., 143, is exactly in point. The policy was payable to the wife of the assured and in case of her death to her children. The wife died before her husband, who without the knowledge or consent of the children surrendered to the defendant company the policy in consideration of sums paid to him upon such surrender. The plaintiffs did not know of the existence of the policy until after their father's death when they made an offer to pay the premiums which the company declined to accept on the ground that the policy was no longer in force. The sixth paragraph of the syllabus is as follows: "Where a policy in full force was surrendered by the husband without the assent of the assured held that the subsequent failure to pay the accruing premiums did not alone work a forfeiture; that by the agreement of surrender the insurance company did an act the tendency and purpose of which was to prevent future payments by the parties interested and the company cannot defend upon a default to which its own wrongful act contributed, and but for which a lapse *might not have occurred*, and held that the company was liable.

In *Manhattan Life Ins. Co.* vs. *Smith*, 44 Ohio State Reports, 156, the husband had always paid the premiums on the policy in favor of his wife. Subsequent to the payment of the last premium, he separated from his wife. He received the customary notice for payment of the premium before it became due, and then wrote to the company stating the fact of separation, and asked for permission to surrender the policy, and to take up a new policy

in its place. The company negotiated with him for this surrender, and stated the terms on which they would accept it. This all occurred within a short time of June 4th, when the premium was due. Nothing final was done. The surrender was not made, and the premium was not paid. The wife received no notice of these proceedings, nor of the amount of premium due. Held, "Where, in such case, the company repudiates the contract, and by its course of conduct clearly indicates that a tender of the premium after the death of the insured if made would not be accepted, a failure to make such tender will not bar a recovery on the policy."

In *Garner* vs. *Germania Co.*, 110 N. Y., 266, a father took out a policy on his life in trust for his children. He omitted paying a premium when due, but four days afterwards surrendered the policy and issued a new one payable to his wife. The company defended a suit on the original policy on the ground that the premium not having been paid the policy was forfeited. Held that the children had a vested right in the policy surrendered—that the policy did not lapse, because the non-payment of premium was waived by the issue of the new policy, which was, in effect, the continuation of the original.

Held further that the company having aided in the diversion of a known trust fund could not allege that it had acted in good faith.

In *Pitcher* vs. *N. Y. Life Ins. Co.*, 33 Louisiana An. Reps., p. 322, the husband by arrangement with the insurance company allowed the policy to lapse for the purpose of having a policy issued in its stead with new beneficiaries. This was done without the knowledge and consent of the wife. The company defended a suit by the wife on the original policy on the ground, among others, that she had not paid the premiums on the policy even after she became aware of this transaction. Held that this defence was not tenable. That the company was a party to the wrong. "It denied the existence of any policy on

which she, or any person for her, could pay the annual premiums, and, therefore, is estopped from complaining that she did not do that which it had itself deprived her of the power of doing."

In *Schneider* vs. *U. S. Life Ins. Co.*, 52 Hun., 130, the husband surrendered the policy under a release having the forged signature of the beneficiary thereto, during the time in which the premium was payable. Held the failure to pay the premium after the company accepted this surrender was no defence to a suit on the policy. The acceptance of the surrender before default had taken place in the payment of the premium excused its non-payment.

"It is a principal of law that he who prevents a thing from being done shall not avail himself of the non-performance which he has himself occasioned." (3 Addison on Contracts, p. 798.) "A party in this way cannot take advantage of his own wrong." (1 Wharton on Contracts, § 603.)

JAS. AYLWARD DEVELIN,
RICHARD P. WHITE,
*Counsel for Plaintiff in Error.*

92 147 U.S. 177

Office Supreme Court U. S.
FILED.
OCT 26 1892
JAMES H. McKENNEY,
CLERK.

No. 421. October Term, 1891.

IN THE

# Supreme Court of the United States.

Sarah G. Miles,
PLAINTIFF IN ERROR,

*vs.*

The Connecticut Mutual Life Insurance Company,
DEFENDANT IN ERROR.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

## BRIEF FOR DEFENDANT IN ERROR.

HUNN HANSON,
*Counsel for Defendant in Error.*

*Allen, Lane & Scott, Prs., Phila.*

# In the Supreme Court of the United States.

Of October Term, 1891. No. 421.

*Sarah G. Miles,*
*PLAINTIFF IN ERROR,*

vs.

*The Connecticut Mutual Life Insurance Company,*
*DEFENDANT IN ERROR.*

Error to the Circuit Court of the United States for the Eastern District of Pennsylvania.

## *BRIEF ON BEHALF OF THE DEFENDANT IN ERROR.*

## COUNTER-STATEMENT OF THE CASE.

Sarah G. Miles instituted a suit in the Common Pleas, No. 3, of Philadelphia in 1888, upon a policy of insurance for $5000, executed on the 20th June 1877, by the Connecticut Mutual Life Insurance Company, which suit was duly removed to the Circuit Court of the United States for the Eastern District of Pennsylvania, where it was tried in April 1889.

By the terms of the policy, in consideration of an annual premium of $140.20 to be paid on or before 20th June, the

company insured the life of John S. Miles for the benefit of Sarah G. Miles, his wife, upon certain express conditions, one of which was that if any premium subsequent to the first "be not paid when due this policy shall cease and determine." (Record, page 5.)

All of the premiums were paid by Mr. Miles with his own money, the policy was executed at his instance, it remained continuously in his possession, and during the entire time it was in force she had nothing whatever to do with it. (Record, pages 22 and 27.)

The sixth condition upon which the policy was issued and accepted was:—

"That if after the payment of two or more annual premi-"ums upon this policy the same shall cease and determine by "default in the payment of any subsequent premium when "due, then this company will grant a paid-up policy payable "as above for such amount as the then present value of this "policy will purchase as a single premium: *Provided*, that this "policy shall be transmitted to and be received by the company "and application made for such paid-up policy during the life-"time of the said insured and within one year after default in "the payment of premium herein shall first be made." (Record, page 6.)

In June 1886, Mr. Miles called at the office of the company in Philadelphia where all the premiums had been paid, stated that he was unable to pay the premium then due, and on that account desired to give up the $5000 policy and take out one under the sixth condition above referred to. He was told the disadvantages of this, and advised that a plan more beneficial would be to have released just so much of the $5000 as would enable him with the sum allowed for such release to pay what would be due on the remaining sum. The company's clerk calculated what this would be, and finding that if $700 were released he would be allowed eighty-two dollars, and that this was very nearly the sum that would then be due on the $4300 remaining, Mr. Miles concluded to adopt this course. He procured the requisite papers for Mrs. Miles' signature and afterward delivered them

to the company with her name signed (Record, page 44), and received from the company its policy for $4300 upon his life for her benefit. The policy was executed and dated 28th June 1886, and stipulated for the payment of an anuual premium of $120.57. (Record, page 41.)

In June of the following year he visited the Philadelphia office of the company, and saying he could not pay the premium upon the $4300 policy, required one that was paid up. Though advised against this, he insisted, and took the requisite receipt to procure Mrs. Miles' signature. He returned having her name signed to it, received the sum of $583.24 on 9th July 1887, and a policy of that date for $1195 on his life payable to his wife. (Record, page 20.)

Mrs. Miles testified that her name to both receipts had been signed by her husband and without her assent, but it also appeared from her testimony, that her name to the application for the $5000 policy was signed by him (Record, page 30), and that in his dealings with two other insurance companies he had signed her name. (Record, pages 25 and 26.)

Mr. Miles died in February 1888, of pulmonary consumption, and his wife testified that a year before his death he was in very poor health. He was able, however, to attend to his business affairs within three months of his death, and there was no evidence whatever that in June 1886, he was otherwise than in good health.

## ARGUMENT.

The errors assigned raise one question for review and decision. It is: Did the evidence at the trial excuse the failure to pay the premium due 20th June 1886?

It may be admitted—indeed, in view of the testimony, and in this argument it must be—that Mr. Miles had no express authority to surrender the $5000 policy, and to accept in place of it one for $4300 without the assent of his wife: neither implied authority, despite the complete control he exercised and was permitted by her to exercise in his dealing with it and the company. And it is not the purpose of this argument

to contend that although the contract was not in terms between the company and Mrs. Miles, it was not one on which she might recover if on her part there was compliance with its provisions.

All of the evidence manifested, and it is conceded by the plaintiff's argument that Mr. Miles was the agent of his wife so far as attention to payment of the premiums was concerned, and his action in this behalf, of course, legally bound her. With respect to the premium of 20th June 1886, what he did appears from the uncontradicted—the only—testimony on this head, that of William B. Tabor, the clerk in the Philadelphia office of the defendant company, and it was that "Mr. Miles "called at the office—his *premium being due*—and stated his "inability to pay it," &c., &c. (Record, page 36): that is to say, before he offered to give up, or the company to accept the $5000 policy, the premium of 20th June 1886, had become due; and the agent of Mrs. Miles for paying it said he could not pay, and in fact did not pay, but requested, by reason of this inability, the benefit of the sixth condition of the policy. If he could not pay, and was supplied by Mrs. Miles with no money to pay the premium due, the policy by its express terms ceased to be a binding contract. If he could pay or had been furnished with money for the purpose, and yet did not, still the policy ended upon non-payment unless the company connived at such non-payment, of which there was not a *scintilla* of evidence, as there was not that he had been furnished with money, or had it. On the contrary, it was in evidence that in 1887 he was in straightened circumstances (Record, page 29), and his conduct and statement in June 1886, showed that he was so then. And hence the learned judge of the Circuit Court was fully justified in charging the jury: "The premiums, the payment of which was necessary to "keep the policy alive, were not paid, and nothing has been "shown in the judgment of the court which excuses or tends "to excuse the failure to pay them. Whether the failure re- "sulted from the agent's inability to pay or his unwillingness "is unimportant. He did not pay, and the principal must bear "the consequences of his failure. It was her duty to have

"the payments made, and failing in this she cannot recover. "She appears to have given the business no attention what- "ever, but to have left it entirely to her husband. She fur- "nished him with no money to pay. She appears to have "had none. He sought to do the best, as we are justified in "believing, that he could do under the circumstances."

(*a.*) If it should be argued on behalf of the plaintiff that a proper interpretation of the clerk's testimony is that when Mr. Miles offered to give up the $5000 policy it was the 20th June 1886, the day on which the premium was due, but that it was not then past due, her case is not strengthened, because before he offered to surrender (and eight days before the company accepted a release of the $700) he assured the company that he could not pay the premium. As the agent to pay, what he said or did in this connection and relevant to the subject of the agency was that on which the company had a legal right to act, and his statement preceded and was the cause of what the company did.

(*b.*) On page 11 of the plaintiff's brief it is argued that Mr. Miles was induced to make the wrongful surrender and exchange by the company's offer of a paid-up policy and the advice to him to accept it. But both in 1886 and 1887 what took place was the reverse of this contention. The undisputed testimony was that in June 1886, Mr. Miles offered to surrender the $5000 policy and take in place of it one that was paid up. So far from inducing him to do this, he was induced to abandon it. And the course which he adopted he was only induced to take because he could not pay the premium and because it was more advantageous than that which he first desired. In 1887 a similar advantage was declined, but he insisted upon a paid-up policy. He had not the money to pay the premium on the reduced policy and wished to surrender it. "He was advised most strongly not to do "so, but to still further reduce; to keep as much insurance "as was possible. He insisted, however (Record, page 36), "in having a paid-up policy."

(*c.*) It is further argued that the company might easily have known that Mrs. Miles had friends amply able to assist

her, presumably to pay for her the unpaid premiums, and that as it made no inquiry it became a party to the husband's wrongdoing. In no way was it made to appear at the trial that she had such friends. But overlooking this, the business methods of mankind, accepted and generally acted upon, have something of right reason for their existence, and no greater disregard of them could well be imagined than for the defendant company to have first inquired who were the friends of Mrs. Miles able to assist her with money, and then of such, whether or not they would do so. And to set on foot such inquiries in the face of her agent's assertion, when that agent was her husband, would have been an impertinence that no good intention could excuse. Certainly the law imposed no such duty. It made the company secure and safe in relying in good faith upon the assurance of an agent acting within the limit of his authority, with nothing to discredit it, and invoking a provision secured by the policy.

(*d.*) Finally the plaintiff urges that when the releases with Mrs. Miles' name were produced, the masculine character of the handwriting (if such were its character) should have excited suspicion. But had it done so, and aroused thereby the agent of the company had compared it with the signature purporting to be that of Mrs. Miles in 1877 to the application for the $5000, the suspicion would have been at once allayed, for it would have been found to be the same, the signature to that application having also been written in her name by him. (Record, page 23.)

(*e.*) A great part of the plaintiff's argument rests upon the statement that the company committed a wrong in becoming party to the surrender of the policy for $5000, and ought not therefore to be heard to take advantage of the wrong.

The answer is not, as the plaintiff seems to suppose, that the company acted in good faith, is not that it was deceived, though both are true, but that the wrongful act (or, more properly speaking, the act without legal warrant), was a thing wholly apart and disconnected from that on which the company rests for protection, to wit, the assertion by an agent of that within the scope of his authority. What the plaintiff

complains of was not done or thought of by the company until the agent assured it that he could not pay the premium and himself acted upon the assurance by not paying. It was an assertion and an action which the agent, by virtue of his office, was empowered to make and do. It was probably and presumably absolutely true, he had not and could not procure the money to pay. The *status* of the parties being so, the suggestion of the company was one that in nowise changed or influenced it. It was intended to be and was in fact a fair and just one, fair to itself to continue as much of the original contract as could be paid for, and eminently just to the assured, and far more beneficial than that which seemed to her agent the only possible course.

If it be true as argued by the plaintiff (page 8, plaintiff's brief) that the law demands that an agent should never be tempted to place his interest in conflict with his duty, this could certainly never be demanded of one whom the agent had just deceived both as to its interest and his duty.

## Comment upon the Authorities cited in the Plaintiff's Brief.

The three decisions next mentioned are especially relied upon by the plaintiff. They have a resemblance to the case before the court, but with respect to the matter in argument are distinguishable.

The first is the case of *Manhattan Life Ins. Co.* vs. *Smith*, *44 Ohio St. Rep., 156.* A policy was issued by the company upon the life of Smith in favor of his wife. The first premium had been paid by her, the remaining one by him, until difficulties arose between them which led to a separation, the wife suing for alimony. The company had uniformly sent the husband notice of the amount of premium and when due. The wife received no such notice, and as the yearly premium was credited with profits, she did not know the amount, neither when it fell due. After the suit for alimony the husband opened negotiations with the company for the surrender of the policy, during which he informed the

company of his wife's suit, and that he deemed alimony a sufficient support for her. The surrender was not effected, but the premiums, after the negotiation, were not paid. Upon the death of the husband the wife brought suit against the company to recover the amount of the policy. The main defense was non-payment of the premiums. To this it was replied that no notice of what the premium was, and when due, had been given to the wife, and without it she could not know. The company answered that such notice had been given to the husband. It was held that such notice was not sufficient, because the company knew from the husband's communications to it about the separation, and his purpose that he was not then acting as her agent and for her, but in hostility to her interests and against her, and that she was herself entitled to notice, since without it she could not know the amount of the premium due.

In this case, as well as in that now before the court, the husband was not the agent of the wife to surrender the policy, but in the former the husband did not inform the company that he could not pay the premium, for which payment he was the agent, as he did inform, and seemingly truly inform, the company defendant here, before attempting any surrender.

The second case is that of *Whitehead* vs. *The New York Life Insurance Co., 102 New York Rep., 142.* There a husband insured his life for the benefit of his wife upon three policies. Upon the death of the wife the money was payable to her children. She died before the husband, and he, without the knowledge of the children, surrendered to the company the policies and received the surrender value. At the time of the surrender the premium upon one policy was past due, the other two were in full force. In a suit upon the three policies by the children, the court decided that upon the policy on which the premium was due and unpaid there could be no recovery, but upon the other two there should be recovery on the ground that, by canceling the policies the company placed itself where it would give no notice of premiums due, which notice, if given, might have resulted in pay-

ment. It may be permitted the defendant to say, in passing, that the reflection upon the conduct of the father by the court makes it clear that he at least would not have paid, and as to the children they were not entitled to notice, for the premium, unlike the premium in Manhattan Life Ins. Co. *vs.* Smith, was fixed and could be known. However this may be, it is not the purpose of the argument to review the decision further than to differentiate that case from this before the court.

*Non constat* from what took place, the father was able to pay the premiums on the two policies; he did not inform the company that he was not, and thereupon and for that reason propose to surrender the policies, which is what the agent in the case before the court did, which statement was in no-wise discredited at the trial, and which justified his non-payment.

The third case is that of *Garner* vs. *The Germania Insurance Co., 110 New York Rep., 266,* in which the insured was the father and trustee of the beneficiaries, who were his children. A premium fell due 24th September; it was not paid, and four days later the trustee surrendered the policy and applied for and received a new one for the benefit of his second wife, not the mother of the beneficiaries. The new policy was for the same amount as that surrendered and it stipulated for the payment of a like annual premium. Upon the defense that the policy which was surrendered was determined by the failure to pay the premium, the court (page 271) held that the new policy was but a continuation or renewal of that surrendered, and therefore the company waived the failure to pay the premium due 24th September. As the new policy, if not actually between parties different from those to that which was surrendered, at least required payment to a different person who had a right of suit upon it, it is difficult to understand how it could be a continuation or renewal. It is not, however, so much the concern of the argument to show wherein there was error in the decision, if such there was, as to show upon the point of decision how great the difference between this case and that. And the simple statement of the ground of the decision makes this obvious.

The other cases of *Hight* vs. *The Continental Life Ins. Co.*, *Pitcher* vs. *N. Y. Life Ins. Co.*, and *Schneider* vs. *U. S. Life Ins. Co.* need no especial remark. In the first the company, of its own motion, violated its contract. In the second, for the purpose of defeating the right of the beneficiary, the company became a party to an agreement by which the policy lapsed; and in the third (a decision of the Supreme Court of New York), the court followed that of Whitehead *vs.* The New York Life Ins. Co., hereinbefore considered.

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